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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 32

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

vs.

SOUTH CAROLINA TAX COMMISSION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

ARGUMENT OF ARTHUR B. SCHAFFNER, OF CHICAGO, ILLINOIS, AND OF P. F. HENDERSON, OF HENDERSONS AND SALLEY, OF AIKEN, SOUTH CAROLINA, FOR PLAINTIFFS IN ERROR.

ARTHUR B. SCHAFFNER,
P. F. HENDERSON,
HENDERSONS & SALLEY,
Counsel for Plaintiffs in Error.

(33,131)

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SUPREME COURT OF THE UNITED STATES.

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No. 39

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vs.

SOUTH CAROLINA TAX COMMISSION.

BRIEF FOR PLAINTIFFS IN ERROR.

This matter is brought to the Supreme Court of the United States by a writ of error, granted by the chief justice of South Carolina, because there is drawn into question the validity of the Inheritance Tax Act of the State of South Carolina, on the ground of its being repugnant to the Constitution of the United States and especially to the Fourteenth Amendment thereof, in that the statute, as construed and applied by the Supreme Court of South Carolina, levied a succession or

inheritance tax on the transfer and succession of property, to wit, a certain unsecured debt due by a South Carolina corporation to the decedent herein, Francis Beidler, a resident of Chicago, Illinois, which debt constituted property within the jurisdiction of Illinois and not within the jurisdiction of the State of South Carolina. In short, the plaintiff in error submits that the State of South Carolina has attempted to tax a debt which does not constitute property within South Carolina.

The practice of bringing this matter to this Court by writ of error is strictly in accordance with the practice pursued in the case of Blodgett *v.* Silberman, decided April 16, 1928, 72 L. Ed., 470.

The fact that a State has no power to levy an inheritance tax on property not within its borders is universally admitted, and the fact that to attempt to do so by construing an inheritance tax statute as including within its terms property which should be considered as existing outside of the State in question, presents a Federal question and is a proceeding inhibited by the Fourteenth Amendment to the Federal Constitution is definitely decided in Frick *v.* Pennsylvania, 268 U. S., 473; Rhode Island Hospital Trust Company *v.* Doughton, 270 U. S., 69, and Metropolitan Life Insurance Co. *v.* New Orleans, 205 U. S., 395.

The Facts.

An agreed statement of facts is set out in the Transcript of Record (pp. 1-2). Other pertinent facts introduced into the record by the plaintiffs in error and

not controverted by the defendant in error, likewise appear in the record. These facts will be referred to from time to time herein.

The salient facts, for immediate consideration are, that on March 4, 1924, Francis Beidler, a legal resident of Chicago, Illinois, died in said State leaving a Will which has been duly probated in said State, of which Will the plaintiffs in error are executors. At the time of Mr. Beidler's death he owned eight thousand shares of the capital stock of the Santee River Cypress Lumber Company (hereinafter referred to as the Santee Company), a South Carolina corporation, which stock by agreement with the South Carolina Tax Commission, was valued at $1,632,000; upon which the Beidler estate has paid to the State of South Carolina a large inheritance tax. In addition thereto—and this is the matter out of which this litigation arises—the Santee Company was indebted to the decedent at the time of his death in the sum of $556,862.22 for advances theretofore made by him to said Company, and in the sum of $64,672 for dividends previously declared by said Company on the shares of stock above described. Said indebtedness was an open unsecured book account. No security, bond nor note has been given therefor. It was entered upon the books of the corporation in South Carolina; and was also entered upon a complete set of personal books kept by Mr. Beidler in Chicago.

The main question presented by this appeal is whether or not the State of South Carolina could and did properly tax this debt, as property within the State

of South Carolina, as it was held to be by the Supreme Court of South Carolina; or whether on the other hand it is property situate beyond the bounds of the State of South Carolina and not taxable therein.

An inheritance tax approximating 14 per cent of $621,534, or about $68,000 has been levied on this debt by the State of South Carolina; (the "lower brackets" in the calculating being taken up in paying the tax on the stock in the Santee Company owned by Mr. Beidler).

The Statute.

Prior to Mr. Beidler's death the pertinent portion of the South Carolina Inheritance Tax Act read as follows:

> "SECTION 1. A tax shall be, and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, for the support of the State Government in the following cases:
>
> "(*a*) When the transfer is by will or by the intestate laws of this State from any person dying, seized or possessed of the property while a resident of the State.
>
> "(*b*) When the transfer is by will or intestate laws of property within the State, and the decedent was a non-resident of the State at the time of his death."

Shortly after Mr. Beidler's death Section One of said Inheritance Tax Act was amended to read as fol-

lows, the words italicized being added to the Act by amendment:

> "SECTION 1. A tax shall be, and is hereby, imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, *and such transfer shall be held and construed to include all debts and all obligations, secured and unsecured, owed by any resident, citizen, person or corporation of this State to any non-resident; and all property and the rights of any nature whatsoever over which this State has jurisdiction to enforce the payment of the tax,* to persons, institutions or corporations, not hereinafter exempted, for the support of the State Government in the following cases:"

ARGUMENT.

We submit that the pivotal question should be and is the *character of the debt* in question.

The debt herein, as appears by the agreed statement of facts, is "an open unsecured book account." There is no complication herein of a note or bond evidencing the debt, or of a mortgage or deed of trust securing it, which might be taxed where found. If the entry in a book localized the debt anywhere, it was the entry in Mr. Beidler's books in Chicago, for the simple reason that if an action has to be brought upon a book account, the production of the creditors books out a prima facie case. The Supreme Court of South Carolina did not claim to the contrary herein. The advances were made from and were under the law to be

repaid in Chicago (6 R. C. L., 902, Sec. 287; Weyland *v.* Park Terrace Co., 202 N. Y., 231; Ann Cas., 1912-D, 1010).

Hence, we submit that the pivotal question is, where is the real situs of such a debt; and that a substantial answer to this question is found in the maxim "*mobilia sequuntur personam,*" and that thereunder the situs of the debt in question was at the time of Mr. Beidler's death in Chicago, and not in South Carolina.

Some courts have criticized and doubted the binding force and effect ofthe maxim "*mobilia sequuntur personam.*" This Court in its decision in Blackstone *v.* Miller, 188 U. S., 189, (hereinafter fully discussed and which was relied upon in the decision below), treated the maxim in question as inconclusive, yielding and unsubstantial. The Supreme Court of South Carolina herein practically ignored the maxim and held that the debt herein (p. 109) had "*an established local situs at the domicile of the debtor.*"

The decision of the Supreme Court of South Carolina was, however, rendered without the benefit of, and before the handing down of the latest decision of this Court upon the general subject involved, to-wit, the decision of this Court in—

Blodgett v. Silberman.

We submit that the basic doctrine of Blodgett *v.* Silberman, viz, the binding force and effect of the maxim "*mobilia sequuntur personam*" is at variance with the decision of the Supreme Court of South Carolina herein. In the Blodgett case, in determining

whether an interest owned by the decedent in a New York partnership, which the Court held amounted to " a debt owing to him, a chose in action, an intangible," was taxable in Connecticut, the decedent's domicile, this Court held:

> "The power of the state of a man's domicile to impose a tax upon the succession to, or the transfer of, his intangible property, even when the evidences of such property are outside of the state at the time of his death, has been constantly asserted by the legislatures of the various states. * * *
>
> "At common law the maxim *'mobilia sequuntur personam'* applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the state of the domicile or elsewhere, and is so fully sustained by cases in this and other courts, *that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not.* (Italics added.)

This holding is absolutely in line with the former but very brief holding of this court in Rhode Island Hospital Trust Company *v.* Doughton, *supra*:

> "In the matter of intangibles, like choses in action, shares of stock and bonds, *the situs of which is with the owner,* a transfer tax of

course may be properly levied in the State in which he resides."

In the Blodgett case this Court further held that bonds and certificates of indebtedness of the United States, owned by the Connecticut decedent, but physically held in New York State were in fact *debts due* the Connecticut decedent, and that hence under the operation of the maxim "*mobilia sequuntur personam*" their situs, as debts, was in Connecticut and that they were there taxable. This Court further held that a Savings Bank account in New York and a life insurance policy payable to the Estate were both *debts* due to the decedent or his estate in Connecticut and hence were taxable there.

The whole spirit of the Blodgett decision, we submit, to use a phrase employed therein, is that anything "*having as its essence an indebtedness* or a chose in action," has its substantial and primary situs, *and the only situs which arises out of its inherent nature as a debt at the domicile of the creditor*, and hence is there taxable.

While authoritatively reaffirming the controlling effect of the maxim "*mobilia sequuntur personam*," this Court in the Blodgett case, fully recognized the existence of the myriad of the decisions to the effect that bonds, promissory notes, bank accounts, etc., physically held in states other than that of the decedent's domicile may also be there taxed on account of their nature and value as promissory notes, bonds, bank accounts, etc., said the court:

> "Further, this principle is not to be shaken by the inquiry into the question whether the transfer of such intangibles, like specialties, bonds or promissory notes, is subject to taxation in another jurisdiction."

The rationale of the many decisions holding that in addition to the existence of the taxable situs of a debt itself, always at the domicile of the creditor, and never *ipso facto* at the domicile of the debtor, is that the note or bond or mortgage or specialty physically held in a State other than the State of the domicile of its owner, constitutes property of value and property of "concrete tangible form," in itself, in the State where it is physically held (Wheeler *v.* N. Y., 233 U. S., 439). A potent reason frequently assigned for allowing the taxing of a promissory note or bond or other evidence of indebtedness in the state in which it is physically found, is that the executors must get physical possession of such evidence of indebtedness before they could collect the debt evidenced or secured thereby. No such reason or necessity exists in the Beidler case. Suit could be brought and the debt fully proven by the production only of Mr. Beidler's books in Chicago and of the canceled checks which exist in Chicago for the money advanced and by parole evidence that the dividend had been declared. No book or paper in South Carolina is necessary to that end.

To the same general effect are the decisions holding that a bank account owned by a decedent in a State other than his domicile is taxable in the State where the bank is situated. In these decisions it was held, although the technical relation in the case of a bank

deposit of debtor and creditors exists, that in a broader sense a bank deposit is the same as if the depositor had actually left a sum of money in the vault of the bank which he can go and get whenever he desires it. In other words, in these decisions a bank deposit is treated the same as cash actually left in the state in which the bank is situated. See *in re*, Gibbs, N. Y. Supp. 53; *in re* Houdayer, 150 N. Y., 37; 34 L. R. A., 235; 55 A. S. R., 642; McLaughlin *v.* Cluff, 240 Pac., 161, and note to 46 L. R. A. (N. S.), 1175.

This Court also in the Blodgett case by referring to the Multnomah County case, 169 U. S., 421, and the Stempel case, 175 U. S., 309, recognizes the fact that by habitually keeping a fund of money in a state other than that of the owner's domicile and by using it as a "revolving loan fund" that it might acquire a business situs that would make it taxable in the State in which it is used.

We submit that the true rule to be gathered from all of the decisions, as clarified and fortified by the reaffirmation by this Court in the Blodgett case of the controlling effect of the maxim "*mobilia sequuntur personam*" is that the true and substantial and only taxable situs of a debt arises out of "its essence," its character as a debt is at the domicile of the creditor and never at the domicile of the debtor; and that the only cases in which, considering the nature of the debt in the light of the Blodgett case, a debt can be taxed elsewhere are cases in which its evidence or its security is physically there as a thing of value held in some other State than the domicile of the debtor or where it,

as a bank account or a revolving loan fund, is considered as money actually existing in the other State.

The great industry of counsel for the State and our own research, has revealed but one decision in the whole country which seems to attempt to hold that an open account debt is taxable at the domicile of the debtor through its nature and character, viz., *In re* Graff, 128 Minn., 371. We specifically call the attention of the Court hereinafter to the fact that the Supreme Court of Minnesota has subsequently practically overruled the Graff case, and has absolutely shaken its authority. See State *v.* Chadwick, 133 Minn., 117; 157 N. W., 1076; 158 N. W., 637; L. R. A. 1916 E, 1288. The Graff decision is certainly contrary to the doctrine of the Blodgett case.

Blackstone v. Miller, 188 U. S., 189.

The Supreme Court of South Carolina, however, based its decision herein upon its application of the facts involved in the Beidler case, to the decision of this Court in Blackstone *v.* Miller. Hence, we ask to be allowed fully to discuss this important decision and to present the many authoritative interpretations of its doctrine as indulged in both by this Court and by numerous State supreme courts, which have followed and enforced the Blackstone decision as they have understood it. The facts in the Blackstone case were that the testator died domiciled in Illinois. He had $4,000,000 on deposit in New York, and a citizen of New York owed him a debt of comparatively insignificant size, $10,000. The question was whether this property was taxable under the inheritance tax Statute of New York State.

In the Blackstone case there was no suggestion that the debt or deposit could be collected, assuming resistance on the part of the debtor, in any other State than New York.

This Court, passing upon the case that it had before it, held that there was a taxable situs in New York if her laws were necessarily involved in transferring the title of the debt from the dead to the living, and that because it was the laws of New York alone, which breathed vitality into the debt in question, *by furnishing power to make the debtor pay,* that necessarily the laws of New York were involved and that the tax was proper.

We submit, however, that the Blackstone case does not control the Beidler case, for two all sufficient reasons,

(*a*) It may be the intention of this Court, as intimated in the Blodgett decision, to review and modify all decisions, holding that intangibles may have a taxable situs in other States than the domicile of their owner, and

(*b*) That the doctrine of the Blackstone decision is fully applicable only to cases in which the laws of the State of the domicile of the debtor *alone* could force the debtor to pay. But there have arisen since that decision was rendered numerous cases in which it is possible, through facts actually existing at the date of the death of the decedent, for the creditor's executor to collect the debt in *one or more other States* than that of the domicile of the debtor. In these cases no tax has been allowed in the debtors' State, because no certainty exists that her laws alone could make the debtor pay. We present these cases hereinafter and present indisputable facts showing that the debt involved in the Beidler case could be collected in case of resistance in any one of six States other than South Carolina.

These positions in their order.

Has the Blodgett Decision Affected the Blackstone Decision?

In the Blackstone case, we submit that the maxim "*mobilia sequuntur personam*" is treated as being but a yielding fiction and not a settled rule of the situs of intangible property.

Said the court in the Blackstone case:

> "It is a fiction, the historical origin of which is familiar to scholars, and it is this fiction which gives whatever meaning it has to the saying maxim '*mobilia sequuntur personam.*' But being fiction it is not allowed to obscure the facts when the facts become important."

Again the court said:

> "The maxim '*mobilia sequuntur personam*' has no more truth in the one case than in the other. When logic and the policy of a state conflict with a fiction due to historic tradition the fiction must give way."

In a quotation relied on by the South Carolina Supreme Court it was announced as to the effect of an inheritance tax statute, "Thus the legislature intended to repeal the maxim '*mobilia sequuntur personam*' so far as it was an obstacle."

We submit that the maxim receives very different treatment in the Blodgett case, in which it is stated as

a fixed and settled rule of the situs of intangible property. Said the court:

> "At common law the maxim '*mobilia sequuntur personam*' applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the state of the domicile or elsewhere, and is so fully sustained by cases in this and other courts, *that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not.*" (Italics added.)

We submit that the character of the intangible property in question should be the controlling element. That in the Beidler case inasmuch as under the maxim which is now recognized as a fixed and settled rule, whatever "is in its essence an indebtedness" has its situs at the domicile of the creditor; hence that the indebtedness of the Santee Company to Mr. Beidler has its situs in Illinois, and not in South Carolina; that as there is no bond or security, deed or mortgage, or any such paper in South Carolina which can be treated as having a value of its own, that there is nothing in South Carolina to be taxed.

If, however, there be no conflict between the Blodgett decision and the Blackstone decision, we submit, under the Blackstone decision as it is unanimously interpreted by many courts, that the Supreme Court of South Carolina has erred in assessing a tax upon the debt due the Beidler Estate by the Santee Company and in holding that said debt constituted property within the State of South Carolina. This brings us to a consideration of—

The Rationale of the Blackstone Decision as Applied to the Facts of the Beidler Case.

In the Blackstone case, it will be recalled that there were no facts in the record even to suggest that the debt or deposit could possibly, in case of resistance by the debtor, be collected and the debtor "made to pay" in any State other than New York.

In the Beidler case, under the facts in the record, it would have been possible, in case of resistance, to collect this debt in any one of six States other than South Carolina.

The Beidler Estate herein has shown by indubitable testimony which was not gainsaid or contradicted by the South Carolina Tax Commission, that the Brooklyn Cooperage Company at the time of Mr. Beidler's death owed to the Santee Company for timber sold to it vastly more money than the Santee Company owed to the Beidler Estate. It was further shown by affirmative testimony, which is in the record, that the payment of this debt by the Brooklyn Cooperage Company was absolutely guaranteed by the American Sugar Refining Company. It was further affirmatively shown that both of these companies are amply solvent and that each of them have unencumbered property, worth vastly more than the debt of the Brooklyn Cooperage Company to the Santee Company, situate in each of the following states, to-wit: Massachusetts, New York, Pennsylvania, and Maryland.

It was further shown by the Beidler Estate, all of which appears in the record herein, that under the laws of each of these four states, and also under the laws of Arkansas and Missouri where the Brooklyn Cooperage Company and the American Sugar Company do business, that the Beidler Estate either by having ancillary administration taken out in said states or by transferring the debt to an assignee, or by direct suit in New York or Arkansas where, by statutes, a foreign executor may sue, could, by attachment or garnishment of the debt due by the Brooklyn Cooperage Company and guaranteed by the Refining Company to the Santee Company, collect said debt by legal proceedings in any of said states should the Santee Company resist payment. In other words, it was amply shown in the record and not contradicted, that if resistance should be assumed that the Beidler Estate could collect its debt from the Santee Company without ever entering the State of South Carolina, and without taking out letters of ancillary administration therein for the purpose of completing the devolution of the debt from the dead to the living or reducing it to hand. The burden of showing to the contrary was a burden on the Tax Commission of South Carolina. They offered no evidence but tacitly accepted the facts as proven herein and as set out in the present record by the Beidler Estate to the contrary.

In response to this absolute showing that the Beidler Estate need never enter the State of South Carolina to avail itself of the debt due by the Santee Company,

the South Carolina Supreme Court held herein as its interpretation of the Blackstone decision and of the decisions construing it, that in order to avoid the payment of an inheritance tax in South Carolina it must appear that the Beidler Estate not only could collect its debt against the Santee Company by attaching the debt due to it by the Brooklyn Cooperage Company in some State other than South Carolina, but also that it must appear that the Beidler Estate *could secure personal jurisdiction of the debtor,* the Santee Company, in some other State than South Carolina.

We submit that this is not the true interpretation of the Blackstone case as appears both from its own language and from the universal interpretation that has been placed upon it by other courts.

Passing then to the Blackstone decision, we quote the language of the Court, as follows:

> "If the transfer of the deposit *necessarily depends upon and involves the law of New York for its exercise,* or, in other words, *if the transfer is subject to the power of the State of New York, then New York may subject the transfer to a tax.* United States *v.* Perkins, 163 U. S., 625, 628, 629; McCulloch *v.* Maryland, 4 Wheat., 316, 429. But it is plain that the transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, *but because of the practical fact of its power over the person of the debtor.* The principle has been recognized by this court with regard to garnishments of a domestic debtor of an absent defendant. Chicago, Rock Island & Pacific Ry. Co. *v.* Sturm,

174 U. S., 710. See Wyman *v.* Halstead, 109 U. S., 654. *What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay.* It does not matter that the law would not need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. To test it, suppose that New York should turn back the current of legislation and extend to debts the rule still applied to slander that *actio personalis moritur cum persona,* and should provide that all debts hereafter contracted in New York and payable there should be extinguished by the death of either party. Leaving constitutional considerations on one side, it is plain that the right of the foreign creditor would be gone.

"Power over the person of the *debtor confers jurisdiction,* we repeat. And this being so we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the State at the time of the death. The maxim *mobilia sequuntur personam* has no more truth in the one case than in the other. When logic and the policy of a State conflict with a fiction due to historical tradition, the fiction must give way." (Italics added.)

It is to be noted the tax is held to be proper in the Blackstone case, because the laws of New York are necessarily involved in transferring the debt therein from the decedent to his beneficiary, because it is the law of New York alone which *gives the debt vitality* by making the debtor pay. Beyond the language quoted, the court further, and as an illustration, supposed the possibility of a moratium being declared in New York State and remarked that in such a case "*the right of the foreign debtor would be gone.*"

In other words, the fact that the laws of New York State *alone* could make the debtor pay, was the fact that conferred the taxable situs.

Since the Blackstone case was decided, however, numerous cases have arisen in which it appeared that the debt could be collected in one or more States other than the State of the creditor's domicile. In each of these cases the right to the tax was denied. These decisions are by most eminent courts, and we feel sure that their reasoning will be at least persuasive.

In examining these authorities, we also ask to point out the fact that they do not bear out the assertion made by the Supreme Court of South Carolina, that they are based on ability to secure personal jurisdiction of the debtor. They are based, we submit, on ability *to collect the debt.*

New York.

In re Gordon, 186 N. Y., 471; 79 N. E., 722; 10 L. R. A. (N. S.), 1089.

This decision is far-reaching and, we submit, fully establishes the position herein invoked. The decedent was a resident of New Jersey. His life was insured in tax upon the policy of insurance. Obviously a most vital question was thereby presented to the Court of Appeals of New York, for if an inheritance tax could one of the great Metropolitan Life Insurance Companies of New York City which was incorporated under the laws of the State of New York and which had its principal business therein. The authorities of the State of New York attempted to collect an inheritance be collected in the Gordon case, the inheritance taxes could be collected upon life insurance policies of all of the citizens of the United States, wherever domiciled, whose lives are insured in New York companies. The Court of Appeals of New York State had decided the Blackstone case in 1902 and it had been affirmed by the United States Supreme Court in 1903. The Gordon case was decided in 1906, with both its former decision

and the decision of this Court in the Blackstone case, therefore prominently before the Court of Appeals of New York State, which rendered the following decision upon the important question of the collectibility of an inheritance tax upon the insurance policy in question:

> "The question presented is whether a claim under a certain policy of life insurance issued by a New York corporation to and upon the life of a resident of New Jersey is properly subject to a transfer tax in this State, within Subdivision 2 of Sec. 220 of the transfer tax law of 1896 (Laws 1896, chap. 908, p. 868), which imposes a tax 'when the transfer is by will or intestate law of property within the State, and the decedent was a non-resident of the State at the time of his death.' The learned appellate division reversed the decision of the surrogate, and held that it was not property so taxable, and we concur in this view. * * * It is, however, urged that principles which might otherwise be regarded as fixing the *situs* of this debt at the place of domicile of the owner and holder constitute more or less of an historical fiction, which at times must yield to more practical and important considerations; *that where a creditor must go to the domicile of his debtor, and rely upon the laws and tribunals of that jurisdiction for enforcement of his claim, the latter should be regarded as having its situs there;* that the claim here involved comes within this rule, and must be regarded as property taxable in New York, because there the debtor insurance company was organized and has its principal place of business and thither must go to the policyholder for collection of his claim. And in sup-

port of this contention the learned counsel cites the cases of Blackstone *v.* Miller, 188 U. S., 189; 47 L. Ed., 439; 23 Sup. Ct. Rep. 277, *in re:* Houdayer, 150 N. Y., 37; 34 L. R. A., 235; 55 Am. St. Rep., 642; 44 N. E., 718; and *in re:* Clinch, 180 N. Y., 300; 73 N. E., 35, which, it is claimed, have applied the principles invoked and upheld taxation in New York upon facts not to be differentiated from those presented here. We cannot, however, agree with him that these otherwise controlling decisions are predicated upon facts which fully square with those arising in this proceeding, *for the creditor in each one of them, unlike the respondents here, was really under the necessity of going to the domicile of his debtor in New York for protection and collection of his claim. Thus the essential fact was present which alone permitted the application of the principles referred to,* and whatever was then said apparently supporting appellant's position must be interpreted in the light of that circumstance.

"The Blackstone case involved the question of the right of the State of New York to impose a tax upon the transfer of an ordinary indebtedness due from a citizen of that State to a non-resident, and also of a deposit made by such non-resident in the State. There is no discussion of the right with reference to the ordinary indebtedness, but the entire opinion is devoted to a consideration of the power to impose a tax with respect to the deposit. This Court had fully affirmed the right to impose a tax upon the transfer of a deposit made within the State, upon the ground that it was the equivalent of actual money, and therefore clearly property

within the State. It had affirmed in that particular proceeding the imposition of a tax upon that ground, and this was all that it was necessary to consider. The Supreme Court of the United States, in the opinion delivered by Judge Holmes, however, deemed it wise to go beyond this ground, and hold that a tax could be sustained even upon the theory that the deposit was an ordinary debt. *But this holding was unequivocally based upon the conditions disclosed in that case, which were that the debtor resided within the State, and that the creditor must come there and take advantage of the laws of the State for the purpose of enforcing his claim.*" (Italics added.)

It is specifically to be observed that there is no reference herein to the fact that personal jurisdiction of the Insurance Company could be obtained in New Jersey, but the decision is squarely bottomed upon the fact that *collection of* the insurance policy could be effected in New Jersey.

Massachusetts.

Bliss v. Bliss, 221 *Mass.*, 201; 109 *N. E.*, 148; *L. R. A.* 1916-*A*, 889.

Bliss, Fabyan and Company, a partnership, owed Cornelius N. Bliss certain promissory notes. The partnership had its principal office in Boston, where one partner lived, but also maintained separate offices in New York and Chicago, in each of which cities members of the partnership resided. The notes were executed in Boston, where the main office of the firm

was, were made payable in Boston, and after the death of Mr. Cornelius Bliss, were actually paid to his executor by check sent out of the Boston office.

The State of Massachusetts levied an inheritance tax, which was held invalid by the Supreme Court of the State for the following reasons, which are quite pertinent to the present case:

> "The maker of these notes was a partnership. It had a place of business, ample assets to meet the obligations, and a resident partner within the State of New York, and upon whom legal service could be made, *binding upon enough property of the partnership, to secure the payment of the notes.* There was no occasion for the creditor to resort to our courts to give validity to the notes. *The creditor did not, and did not need to, depend upon our law for the collection of his debt.* The circumstances that for some purposes the office of the partnership in Boston was treated as its principal home office, has no decisive effect. *It was not the place to which the creditor was required* to come to collect his debt. Nor does the fact that the notes were made in Boston and were payable there necessarily give them a *situs* for taxation purposes, in Massachusetts. *State Tax on Foreign-Held Bonds,* 15 *Wall.,* 300. The mere accident that for other reasons the executors of the Will of the owner of these notes resort to our courts does not, of itself, confer jurisdiction to impose a succession tax on these notes. The doctrine of *Blackstone v. Miller,* 188 U. S., 189, does not reach to a case like the present * * * *The law of Massachusetts does not need to be invoked in any respect.* The sanction of the law

of New York alone gives completion to the succession from its beginning to its end. Hence, without considering other aspects of this contention, there is no sound foundation for any succession tax in this Commonwealth." (Italics added.)

The Massachusetts Court, pursuing the same general train of thought, then held that a number of registered bonds of the State of Massachusetts, although held by Mr. Bliss physically at his domicile out of the State, were taxable because they being registered must of necessity be brought to Massachusetts for transfer.

Upon the question of any necessity to secure personal jurisdiction of the debtor, we especially call attention to the statement of the Massachusetts Court that there could be no tax in Massachusetts because "legal service could be made" in New York, "*binding upon enough property of the partnership to secure the payment of the notes.*" There was no thought with the court of *personal jurisdiction;* the idea was the practical one—that the debt could be collected in New York State, hence no resort to the Massachusetts courts was necessary.

Minnesota.

As has hereinbefore been noted, the Supreme Court of Minnesota *In re* Graff, 128 Minn., 371, had in February, 1915, held a debt to be taxable in Minnesota, which was the domicile of the debtor. This is the case relied on by the South Carolina Tax Commission. We, however, especially call the attention of the court to the decision of the same court handed

down in May, 1916, entitled State *v.* Chadwick, 133 Minn., 117; 157 N. W., 1079; 158 N. W., 637; L. R. A. 1916-E, 1288.

This decision of the Supreme Court of Minnesota explains and practically overrules the Graff case and quite learnedly discusses the Blackstone decision.

In the Chadwick case the facts are that the decedent, a resident of Chicago, owned bonds of the Great Northern Railway Company. The Railroad was a corporation under the laws of Minnesota but with offices in New York, Wisconsin, South Dakota, North Dakota, Montana, Idaho and Washington. The frequent use, in the Chadwick case, of the word "jurisdiction" may be explained by the fact that the Inheritance Tax Law of Minnesota in describing the property to be taxed provided for a tax of all property owned by the decedent within the State of Minnesota, "and within its jurisdiction." Said the Supreme Court of Minnesota in the Chadwick case:

> "In *State* (Graff) *v. Probate Court of St. Louis County*, 128 Minn., 371; 150 N. W., 1094, L. R. A., 1916-A, 901, the right to impose a succession tax received exhaustive consideration. It was held that a *promissory note* made by a Minnesota corporation, *not appearing to be subject to jurisdiction out of the State*, to a resident of Pennsylvania, was upon his death subject to a succession tax in Minnesota. We start, then, with the law settled that a promissory note made by a corporation of this State, *not subject to jurisdiction elsewhere*, is subject to a succession tax in this State, though the owner is a nonresident. The appellants seek to distinguish the case at bar from the one cited because it in-

volves a corporate bond instead of a promissory note, because the bond is registered at the office of the corporation maker in New York, and because the corporation is subject to jurisdiction in States other than Minnesota. *We discuss only the distinction last mentioned.*

"Jurisdiction of the railway company can be had outside of Minnesota in each of the seven States through which its lines pass, and in which it is authorized to do business, and in New York where it has an office. Because of this the appellants urge that there is no situs in Minnesota upon which to base jurisdiction to lay a succession tax. *That it is necessary for the non-resident creditor of a resident debtor to come into the State and invoke its laws and use its courts to enforce his obligation is a fact of importance in the determination of the right of the State to impose a succession tax;* and indeed where the security holder is a non-resident and the security is not physically within the State *it is the one essential fact consciously or unconsciously accepted in the cases where a succession tax is sustained as vital to jurisdiction. This is the thought in Blackstone v. Miller,* 188 U. S., 189; 23 Sup. Ct. 277; 47 L. Ed., 439, affirming a decree of the surrogate's Court which was affirmed in 69 App. Div., 127; 74 N. Y. Supp., 508, and 171 N. Y., 682; 64 N. E., 118, where the Court says:

" 'If the transfer of the deposit necessarily depends upon and involves the law of New York for its exercise, or, in other words, if the transfer is subject to the power of the State of New York, then New York may subject the transfer to a tax. * * * But it is plain that the

transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, but because of the practical fact of its power over the person of the debtor. * * * What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case. * * * So again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. * * * Power over the person of the debtor confers jurisdiction, we repeat. And this being so we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizen than upon tangible chattels found within the State at the time of the death.'

"In the case before us there is no necessity of the owner coming to Minnesota to enforce the bonds. They can be enforced in New York or in any of the seven States through which the road passes. Under the Constitution a judgment upon the bonds rendered in any of these States will be entitled to full faith and credit in Minnesota. Const. U. S., Art. 4, Sec. 1. And the trust deed securing the bonds can be enforced in any of the seven States and all the lines in the several states, constituting as they do one system, can be sold and title passed under the foreclosure decree. *Muller v. Dows*, 94 U. S., 444; 24 L. Ed., 207. *Union Trust Co. v. Olmsted*, 102 N. Y., 729; 7 N. E., 822. *Craft v. Indiana, etc. R. Co.*, 166 Ill., 580; 46 N. E., 1132. *Georgia S. R. Co. v. Mercantile Trust Co.*, 94 Ga., 306; 21 S. E. 701; 32 L. R. A., 208; 47 Am. St. Rep., 153.

International Bridge Co. v. Holland Trust Co., 81 Fed., 422; 26 C. C. A. 469. *Central Trust Co. v. Wabash, etc., R. C.* (*C. C.*), 29 Fed., 618. In *Bliss v. Bliss*, 221 Mass., 201; 109 N. E., 148, L. R. A.., 1916-A, 889, the facts were these: The copartnership of Bliss, Babyan & Co. consisted of five members, two residing in New York, two in Massachusetts, and one in Chicago. It did business in New York, Boston and Chicago. It executed notes to Cornelius N. Bliss, one of the copartners. They were made and were payable in Boston where the copartnership had its principal office. Cornelius N. Bliss was domiciled in New York and the notes were in his possession there at the time of his death and there was property there sufficient to pay them. Upon these notes it was sought to impose a succession tax in Massachusetts. *It was held that they were not subject to such tax and the holding was put definitely upon the ground that it was not necessary to invoke the laws or seek the tribunals of Massachusetts to enforce them.* The court said:

" '*There was no occasion for the creditor to resort to our courts to give validity to the notes. The creditor did not and did not need to depend upon our law for the collection of his debt.* * * * The doctrine of *Blackstone v. Miller*, 188 U. S., 189 (23 Sup. Ct. 277; 47 L. Ed., 439), does not reach to a case like the present. The tax sought to be collected is a succession tax. It is apparent that the succession of these notes or their proceeds does not depend under the circumstances here disclosed in any degree upon the moral or legal support of actual assistance of our laws. * * * The law of Massachusetts does not need to be invoked in any respect.

The sanction of the law of New York alone gives completion to the succession from its beginning to its end.'

"A like conclusion was reached in *Matter of Gordon,* 186 N. Y., 471; 79 N. E., 722; 10 L. R. A. (N. S.), 1089. There it was sought to impose a transfer tax upon the proceeds of an insurance policy issued by a corporation of New York to a resident of New Jersey who died there. The policy was payable in New York and was kept by the insured in New Jersey. By the laws of New Jersey the insurance company was subject to jurisdiction there. Reliance was again placed on *Blackstone v. Miller,* 188 U. S., 189; 23 Sup. Ct., 277; 47 L. Ed., 439, in support of the tax, and in referring to it the court said:

" 'That the holding was unequivocally based upon the conditions disclosed in that case, which were that the debtor resided within the state and that *the creditor must come there and take advantage of the laws of the State for the purpose of enforcing his claim.*'

"It differentiated the facts before it from the facts in the *Blackstone case* because the insurance company could be subjected to jurisdiction in New Jersey as well as in the state of its creation, while in the *Blackstone case* jurisdiction would be acquired of the corporation debtor only in the State under the laws of which it was organized; and it held, because of this distinction, that the proceeds of the policy were not subject to a transfer tax in New York. The *Massachusetts case* and the *New York case* cite a number of authorities, unnecessary to be considered here, supporting the conclusion which they reach. The principle of these two cases is determinate in favor of the contention of the

> appellants, and applying it we hold that the bonds *are not subject to a succession tax in Minnesota because the debtor is incorporated there and has there its principal offices, it being subject to jurisdiction in other states having* property sufficient to satisfy them." (Italics added.)

It is upon a single sentence contained in the Chadwick decision which is quoted by the Supreme Court of South Carolina in its decision in the Beidler case, that the Supreme Court of South Carolina bases its whole contention that the gist of the line of decisions now under consideration is that, for the tax to be avoided in South Carolina, it must appear that *personal jurisdiction* of the debtor can be secured in some State other than South Carolina. We submit that this was not the meaning of the Supreme Court of Minnesota in the Chadwick case. The whole reference to personal jurisdiction in the Chadwick case reads as follows:

> "From what is said it is not to be understood that we hold that the *accidental fact* that a debtor is found out of the State of his domicil, and is subject to jurisdiction there, relieves his obligation in the hands of a non-resident owner from a succession tax to which otherwise it would be subject. What we have said is in view of the facts before us showing personal jurisdiction of the corporate debtor in other states in which it is authorized to do business." (Italics added.)

We submit that manifestly the meaning of the Supreme Court of Minnesota is that the collection of a tax would not be avoided by *"the accidental fact" that after the death of a creditor* the debtor might go into another State and possibly voluntarily and collusively allow jurisdiction to be obtained of him there, but that the rule is that the status of the parties and of the debt at the moment of the creditor's death governs, and that the same cannot be controlled by the accidental comings and goings of the debtor thereafter. Hence, the Beidler case could not be controlled, by any such fact as occurred in the Bliss case, viz: the payment by the Santee Company to Beidler's executors after his death of the debt, or their voluntarily subjecting themselves to the jurisdiction of some other State than South Carolina; but in the Beidler case the controlling consideration is that at the moment of the death of Mr. Beidler, a situation existed which would give the Beidler Estate the full right to collect the debt in question by resorting to attachment in the Courts of any one of six States referred to in the Transcript.

That this is the basis and meaning of the Supreme Court of Minnesota is made perfectly clear by all the language italicized in the foregoing quotation and by its unequivocal statement—

> "That it is necessary for the non-resident creditor of a resident debtor to come into the State and invoke its laws and use its courts *to enforce his obligation* * * * *is the one essential fact consciously or unconsciously ac-*

cepted, in the cases where a sucession is sustained, as vital to jurisdiction."

South Carolina.

In 1924, and one month before Mr. Beidler died, the Supreme Court of South Carolina decided the case of Fuller *v.* South Carolina Tax Commission, 128 S. C., 14; 121 S. E., 478. The facts therein were that the decedent owned bonds, held in New York but secured by a mortgage of the physical properties of a railroad which lay partially in North Carolina and partially in South Carolina. The railroad was a South Carolina corporation. The court carefully reviewed all of the authorities, especially the Blackstone case. It held that there could be no tax in South Carolina unless the laws of South Carolina and her courts must be invoked to complete the descent of the property from decedent to his heirs. This was the South Carolina court's construction of the Blackstone case. Said the court:

> "May ancillary administartion be compelled in the latter State (the domicile of the debtor) or may resort in some form to the laws of the latter State be necessary to secure recognition and confirmation of the title transferred by the intestate or succession laws of the State of the domicile in order to complete the transfer in fact and *make effectual the disposition of the property authorized by the law of the domicile?* If so, we think, there is such a transfer of a non-resident decedent's "*property within the State,*" seeking to impose the tax as may properly be taxed consistently with the theory of inheritance taxation."

The Court then proceeded to hold that there could be no inheritance tax in South Carolina because—

> "In the contingency that it should be necessary for the trustee to foreclose the mortgage for the benefit of the bondholders, since the line of railway mortgaged lies in two states, resort could be had to the Courts of North Carolina to foreclose the mortgage and sell the line of railway as a whole. Miller *v.* Dows, 94 U. S., 444; 24 L. Ed., 207; Riverside Mills *v.* Alabama & Georgia Mfg. Co. 198 U. S., 197; 25 Sup. Ct., 629; 49 L. Ed., 1016. While the efficacy of such a judgment would finally depend upon the laws of this State, in that it could ultimately be enforced only through the Courts of this State, still the judgment would be entitled to enforcement under the full faith and credit clause of the Federal Constitution, and it would seem clear that the executors of or legatees under the will here involved could not be deprived of their beneficial interest in such judgment, by failure to resort to ancillary administration proceedings in South Carolina to establish here the title to the securities transferred by the succession laws of New York. State *v.* Chadwick (Re Ward) 133 Minn., 117; 157 N. W. 1076; 158 N. W. 637; L. R. A. 1916 E, 1288. In any view therefore we can see no valid ground upon which to rest a conclusion that the effectual transfer of these particular securities in accordance with the disposition of the testator's will could be made to depend upon the laws of South Carolina."

It will be seen that in its decision in the Miller case the Supreme Court of South Carolina did not hold that

securing personal jurisdiction of the railroad was necessary. The whole point was that by resort to the courts of North Carolina the executor could collect the amount of the bonds. He need not invoke the laws and processes of South Carolina to collect the money; hence there could be no tax.

Ruling Case Law.

In the Article on Inheritance Taxes in 26 R. C. L., at page 215, under the title "Debts owed by Residents," the author, in considering this question, says:

> "The right to tax in cases of this character is based not upon the domicile of the debtor, but *upon the necessity of resorting to the Courts of the State to enforce the debt,* and when there is *no such necessity,* there can be no tax."

United States Supreme Court.

There is but one reference, so far as we are advised, in the later decisions of this Court to the general question herein involved as covered by the Blackstone decision. This reference is contained in the concurring opinion by Justice McKenna in Wheeler *v.* New York, 233 U. S., at page 446. In the Wheeler case the decedent was a resident of Connecticut. Certain promissory notes of great value owned by him were kept in a safety deposit box in New York City. Ancillary administration of the decedent's estate had been taken out in New York. In discussing the nature of the inheritance taxation as applied to the facts of the case before the court, and with specific reference to the Blackstone case, Justice McKenna said:

> "The tax under review is of that kind. In other words, it is not a tax on property, but a tax upon the transfer of the property by the will of the testator of plaintiffs in error *as provided by the laws of the State.* The will was probated in Connecticut, where the deceased was a resident, but ancillary letters of administra-

tion were issued to plaintiffs in error by the Surrogate's Court, County of New York, State of New York, and the taxed notes were part of the property disposed of by his will. *It appears, therefore, that the property is in the control of the courts of New York. In other words, the laws of New York are invoked, accomplish its transfer and subject it to the dispositions of the will and make effectual the purposes of the testator. Blackstone v. Miller, supra.*" (Italics added.)

Summary as to Doctrine of Blackstone Case.

We submit that the Blackstone case rules only the case of a debt due by a debtor who can be made to pay *only* by the laws and courts of his own State. We submit further that in order to sustain the tax the debtor's State has the burden on it of showing, with certainty, that the debt may not be collected elsewhere.

We submit further that the doctrine invoked by the Supreme Court of South Carolina, that it must appear that personal jurisdiction of the debtor, in other States, is necessary is an innovation of no merit. There may be cases in which personal jurisdiction is necessary to assist in collecting the debt; but collecting the debt alone is the essential factor.

Beidler Case Not Within the Spirit of the Blackstone Case.

We submit that the whole theory of inheritance tax legislation is that the State is entitled to a tax if the devolution of a decedent's estate from the dead to the living heir is reasonably referable to her laws. The

State of the domicile is always entitled to a tax, because her laws determine the succession or prove and recognize the will. But no other State is in so favorable a situation. If any other State is to levy a tax she must show that, in case of resistance, the creditor must use her laws and her courts.

Then, we submit, there is another vital step as applied to the Beidler case. There should be some reasonable possibility that the creditor will resist making payment. In the Blackstone case the chance that there might be resistance was present, *but in the Beidler case there is absolutely no chance of resistance,* for the simple reason that Mr. Beidler owned a controlling interest in the company and his executors are now in absolute control of the company, and Mr. Beidler's heirs own the balance of the stock.

Hence, we submit that, under the undisputed facts, there can be no human possibility of the laws or courts of South Carolina exercising any coercive power over the Santee Company or performing any service in transferring this property from the dead to the living heir. Hence, we sumit, that the Beidler case stands upon a basis different to any other case that has ever been submitted to the courts. It should be exempt from double taxation for this distinguishing reason as well as all others.

Other Points in the Decision of the Beidler Case by the Supreme Court of South Carolina.

In addition to attempting to differentiate the Blackstone decision and its own Fuller decision from the Beidler case by ignoring the maxim "*mobilia sequun-*

tur personam'' and by holding that because the courts of South Carolina alone can obtain personal jurisdiction over the Santee Company that the tax is proper whether actual necessity to sue in South Carolina exists or not, the Supreme Court of South Carolina further held that the indebtedness in question was property in South Carolina and hence taxable therein for two additional reasons—

(1) That South Carolina has jurisdiction of the debt for purposes of administration, and,

(2) Because, under certain South Carolina decisions, it had been held that a domiciliary executor of a sister State has no title to a debt due to the estate of a decedent of another State by a resident of South Carolina.

These in order:

The Question of Jurisdiction for Purposes of Administration.

The Supreme Court of South Carolina seized upon the expression contained in Wyman *v.* Halstead, 109 U. S. 654, to the effect that,—''The general rule of law is well settled, *that for the purposes of founding administration,* all simple contract debts are assets at the domicile of the debtor.'' Based upon this excerpt from the decision of this Court in the case referred to, the major premise of the decision of the Supreme Court of South Carolina herein is that therefore the situs, even for purposes of inheritance taxation, of a

debt due to a deceased person is at the domicile of the debtor and not at the domicile of the creditor.

We submit that manifestly the excerpt from Wyman *v.* Halstead quoted (which is really an obiter, but which correctly states a general rule) means that the existence of a duty on the part of a debtor to pay will support the granting of letters of administration at such debtor's domicile, which is an entirely different thing from the situs of a debt for taxation purpose. This distinction is made in Rwy. *v.* Sturm, 174 U. S., 710. However this may be, the pertinent fact is that the decision of the Supreme Court of South Carolina was rendered before the Blodgett decision, and that any force whatsoever that has been contained in the major premise of the decision of the Supreme Court of South Carolina herein has been destroyed by that decision, which in specific terms holds that for purposes of inheritance taxation whatever may be the "discussion and criticism of the application of enforcement of the maxim," *mobilia sequuntur personam,* elsewhere, that, so far as the Supreme Court of the United States is concerned, "that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not."

We submit that manifestly the meaning of the rule referred to in Wyman *v.* Halstead as affecting such a case as this, is that if the Beidler estate were under any necessity to sue the Santee Company that the obligation of the Santee Company to pay would constitute such an asset as would permit the taking out of ancillary letters of administration in South Carolina. This is a very different thing from fixing a

new taxable situs wherever a debtor resides. If this doctrine be established then in every case in which there is a debtor in one State and a creditor in another, there will necessarily be two State inheritance taxes (given the necessary legislation). We have seen in the Fuller case, the Bliss case, the Gordon case and the Chadwick case, that this is not necessarily so. This was the basis of the Graff case which the Supreme Court of Minnesota in the later Chadwick case was careful to put on another basis. The cases referred to establish the fact, not only that *the* real and substantial situs of a debt is at the domicile of the creditor and not that of the debtor, but specifically the fact that there is not *a* taxable situs at the domicile of the creditor arising out of that fact alone. It can arise only when a necessity to resort to the laws and courts of that State is affirmatively shown. If the principle invoked by the Supreme Court of South Carolina is correct, it would have applied absolutely to the Blackstone case, but this court therein announced no such holding.

Again, if actual situs is meant, the application of such a doctrine would make the death of a creditor automatically shift the situs of a debt from his domicile to the debtor's domicile. At the moment before Mr. Beidler's death the situs of the debt herein would be in Illinois, and in South Carolina the moment after.

The Question of Title to the Indebtedness.

The Supreme Court of South Carolina basing its reasoning largely upon its decision of Dial *v.* Gary,

14 S. C., 571, and Hayward *v.* Williams, 57 S. C., 235, held further that the debt due Mr. Beidler is taxable in South Carolina because the title of Mr. Beidler's domiciliary executor in Illinois to the debt is not complete without the aid of the laws of the State of South Carolina to complete it, because (they argue), a domiciliary executor could not enter the State of South Carolina and sue in its courts but must seek the appointment of an ancillary administrator in South Carolina, hence that the title to the debt "is in abeyance until an ancillary administrator be appointed by the courts of this State to receive it and perfect the succession," (Transcript p. 109), and because in the decision stated (Dial *v.* Gary), it is held that inasmuch as the foreign domiciliary executor has not title to such a debt, that his assignee, deriving therefore no title from his assignment, could not maintain an action in South Carolina.

The question that might be involved in the Beidler case, we submit to the contrary, would not be what laws the executors of Beidler's Estate would be confronted with if they endeavored to enter South Carolina to bring suit against the Santee Company, but the question would be whether under the laws established by the Supreme Court of the United States and by the laws of other States, the Executors of Beidler actually had title to the debt due by the Santee Company, in fact, in Illinois, upon the death of Beidler, and if that became pertinent whether such executors or ancilliary administrators acting for them in other States, or the assignees of the executors might bring suit by attachment to collect the debt in Massachusetts, New York, Pennsylvania, Arkansas or Maryland.

We submit that the doctrine in force in South Carolina as construed in the Beidler decision by the Supreme Court of South Carolina and as gathered from Dial *v.* Gary and from Heyward *v.* Williams, is opposed to the law as established by this Court and by the great majority of State Courts, South Carolina to the contrary holding with a meager minority. To this effect we cite:

Wilkins v. Ellett, 9 Wall. 740, and 108 U. S., 156.

This interesting case went to the United States Supreme Court twice and the principles therein enunicated have been followed in myriads of cases in which it has later been cited. In the Wilkins case, the decedent, one Quarles died in Alabama. A resident of Tennessee, one Clark, owed Quarles $3,500 *on open account*. An administration was granted in Alabama. Clark, the Tennessee debtor, paid the debt to the Alabama administrator. Later an administration was taken out in Tennessee. The question then arose as to whether or not the payment to the Alabama administrator absolved the Tennessee debtor of the debt. In these two decisions the Supreme Court of the United States settled the question of the title of a domiciliary executor or administrator to an open account debt (and the incidental question of the right of an assignee of a domiciliary executor or administrator to sue in another State), relied on by the South Carolina Supreme Court in its decision herein, establishing a doctrine directly to the contrary of the rule adhered to by the South Carolina Court. Said the Supreme Court of the United States:

"The original administrator, therefore, with letters taken out at the place of the domicile, *is invested with the title to all the personal property of the deceased* for the purpose of collecting the effects of the estate, paying the debts, and making distribution of the residue, according to the law of the place, or directions of the will, as the case may be (9 Wall., 742)."

Again:

"There is no doubt that the succession to the personal estate of a deceased person is governed by the law of his domicile at the time of his death; that the proper place for the principal administration of his estate is that domicile; that administration may also be taken out in any place in which he leaves personal property; and that no suit for the recovery of a debt due to him at the time of his death can be brought by an administrator as such in any State in which he has not taken out administration.

"But the reason for this last rule is for the protection of the rights of citizens of the State in which the suit is brought; *and the objection does not rest upon any defect of the administrator's title in the property, but upon his personal incapacity to sue as administrator beyond the jurisdiction which appointed him.*

"The administrator, by virtue of his appointment, and authority as such, *obtains the title in promissory notes or other written evidence of debt,* held by the intestate at the time of his death, and coming to the possession of the administrator; *and may sell, transfer and indorse the same; and the purchasers or indorsees may maintain actions their own names against the*

> *debtors in another State*, if the debts are negotiable promissory notes, or if the law of the State in which the action is brought permits the assignee of a chose in action to sue in his own name. Harper *v.* Butler, 2 Pet., 239; Shaw, C. J., in Rand *v.* Hubbard, 4 Met. 252-260; Peterson *v.* Chemical Bank, 32 N. Y., 21." (109 U. S., 258. Italics added.)

In passing it is to be noted that in the authorities just quoted by the Supreme Court of the United States to the effect that an assignee of an executor may sue in his own name upon a chose in action are decisions from the Supreme Courts of Massachusetts and of New York. Other decisions to the same effect from said courts and the Supreme Court of Pennsylvania are: Maas *v.* Bank, 176 N. Y., 377; Hutchins *v.* Bank, 12 Metc., 421; and in Pennsylvania, Harris *v.* Hall, 11 Pa. Co., 53 (Aff. 148 Pa., 345). In Scher *v.* Adams, 220 App. Div., 309, the right of one to maintain an action in New York State upon a debt which has been assigned to him by a New Jersey domiciliary executor, is expressly upheld. In Bostwick *v.* Carr, 165 App. Div., 55; 151 N. Y. S., 74, and in St. Louis Rwy. Co. *v.* Cleere, 76 Ark., 377, the right of a foreign domiciliary executor *personally* by virtue of existing enabling statutes of said states, to enter the *States of New York and of Arkansas* and there maintain an action on a debt without the appointment of an ancillary administrator, is established. This fact was recognized by this Court in Lawrence *v.* Nelson, 143 U. S., 222, and

in Hayes *v.* Pratt, 147 U. S., 569. In any other state involved ancillary administration could be taken out. Hence, beyond doubt the debt could be collected by the Beidler Estate without entering South Carolina.

Directly opposed to the holding of the South Carolina court that the title to the debt is "*in abeyance*" until an ancillary administrator is appointed in South Carolina, is the decision of the Supreme Court of Massachusetts in the case of Adams *v.* Batchelder, 173 Mass., 258; 73 A. S. R., 282—a very similar case to the Beidler case as to the nature of the debt involved—in which the Supreme Court of Massachusetts, in an opinion delivered by Justice Holmes, said:

> "*The debt was not suspended until the appointment of the ancillary administratrix.* * * * As is said in Wilkins *vs.* Ellett, 108 U. S., 256, the objection to the administratrix bringing an action here '*does not rest upon any defect in the Administrator's title to the property*, but upon his personal incapacity to sue as administrator beyond the jurisdiction which appointed him'." (Italics added.)

To the same general effect is the language of the New York Court of Appeals in Maas *v.* Bank, *supra*, 98 A. S. R., 691:

> "Payment to the personal representative is good, because at the death of the intestate *he becomes entitled to all his personal property wherever situated*, and having the legal title thereto he can demand payment." (Italics added.)

The gist of the whole matter, we submit, is simply that because the domiciliary executor has title to all property of the estate, by virtue of his office, and for this reason alone, that payment to him is good.

24 *Corpus,* 1118, states the rule:

> "The general rule is that the title of a domiciliary representative extends to all of decedent's personal estate wherever situated, although in some jurisdictions the title of the domiciliary representation is held to be limited to assets within the jurisdiction."

Then in a footnote it is shown that the *minority rule is maintained only in South Carolina* and two other states.

A host of decisions following the doctrine of Wilkins *v.* Ellett upon both points referred to are set out in 24 *Corpus Juris,* 1118, and 3 U. S. Supreme Court Digest 3130.

The Supreme Court of South Carolina in its own very recent decision *In re* Wolfe, Administrator *v.* Bank of Anderson, 123 S. C., 208; 116 S. E., 451, held:

> "However, it has been generally held that a domiciliary representative may accept voluntary payment of debts from debtors residing outside of the jurisdiction in which the grant of letters was made, provided there are no debts due from the estate in the jurisdiction where a foreign debtor of the estate resides; and in many jurisdictions the absence of debts due by the estate does not seem to be a prerequisite to the validity of a voluntary payment to the domiciliary executor or administrator by a nonresi-

> dent debtor, a voluntary payment being made in this manner being held final and conclusive as against an ancillary administrator subsequently appointed, and a bar to a suit brought by such subsequently appointed ancillary administrator. The reason for this rule is *that the duties of a domiciliary administrator are general and unlimited. He is invested with a title to all the property of the deceased* for the purpose of collecting the effects of the estate, paying the debts, and making distribution of the residue according to the law of the place."

It is difficult, we submit, to reconcile the doctrine announced by the Supreme Court of South Carolina in the Beidler case, that the title of a domiciliary administrator in another State to a debt owed to the decedent by a resident of South Carolina is "in abeyance" and is not complete until the estate comes within the State of South Carolina and invokes its laws by the appointment of an ancillary administrator within this State, with the doctrine recognized in the Wolfe case by the Supreme Court of South Carolina and established by this Court in the Wilkins case, that such foreign domiciliary administrator may accept the payment of a debt under Wilkins *v.* Ellett, and give full acquittance therefor. It is submitted that only the fact that the domiciliary administrator in the decedent's State *has title to the debt* would give him the right to accept payment and to give full acquittance therefor.

The decision of the Supreme Court of South Carolina that the title to the debt is held "in abeyance" in

South Carolina until an ancillary administrator is appointed in this State is directly in line with said court's action in ignoring in its decision herein the maxim "*mobilia sequuntur personam.*" If this maxim may successfully be ignored, then it could successfully be argued that the title to the debt was held in abeyance in South Carolina. But if, under Silberman *v.* Blodgett, the maxim is controlling, then the debt in question was an intangible existing in Illinois when Mr. Beidler died. Instantly upon their qualification, title to it as an intangible then existing in Illinois automatically passed upon Mr. Beidler's death to his domiciliary executors in Illinois, without the aid of the South Carolina laws or courts.

Again, specific attention is called to the fact that the whole doctrine of the Supreme Court of South Carolina as set up in Dial *vs.* Gary, *supra*, is for the protection of creditors of the decedent's estate within South Carolina, and for no other purpose. This appears specifically in the decision of Dial *vs.* Gary, in which decision it is recognized that unless there are such South Carolina creditors that the doctrine fails.

In the Beidler case there is absolutely no evidence, because there could be none, that there are any South Carolina creditors of Mr. Beidler. He owed no debts within the State of South Carolina.

Referring to the South Carolina decision of Dial *vs.* Gary, we specifically call the attention of the court to the Iowa decision of Campbell *vs.* Brown, 52 American Reports, 446, in which the decision of Dial *vs.* Gary

is referred to and in which the fact that the doctrine enunciated is opposed to that of Wilkins *vs.* Ellett as decided by the Supreme Court of the United States, is adverted to. The Iowa Supreme Court therein refused to follow the doctrine of Dial *vs.* Gary, but adhered of course to the doctrine enunciated by the Supreme Court of the United States in Wilkins *vs.* Ellett.

The Attachment Question.

Beyond the objection that under the South Carolina decisions the domiciliary executors of the Beidler estate in Chicago did not succeed to the title to the debt due Mr. Beidler by the Santee Company, the Supreme Court of South Carolina did not deny, but practically in terms admitted, that the Beidler estate, through the situation that existed at the moment of Mr. Beidler's death, would have been able to enter the courts either of Massachusetts, New York, Pennsylvania, Maryland, Arkansas or Missouri, and in any of said states to have attached and garnisheed the debt owing by the Brooklyn Cooperage Company and the American Sugar Refining Company to the Santee Company, and thus to have collected the indebtedness of the Santee Company to the Beidler estate directly through suit brought by the Illinois domiciliary executor as is allowed by statute in New York and Arkansas, or through an ancillary administrator, or by assigning the debt to a citizen of one of the states in question. In other words, but for the objections above noted, the Supreme Court of South Carolina seems to admit that no necessity would ever exist on the part of the Beidler

estate to enter the courts of South Carolina or to resort to its laws. We argued this matter fully before the Supreme Court of South Carolina and evidently to its satisfaction, except for the objections herein referred to, which objections we have hereinbefore referred to.

For these reasons we are not setting out in our argument in chief in order that the same may not be unduly prolonged, a detailed argument upon the question of the ability of the Beidler estate to collect its debt in other states save South Carolina. But, we are setting out a detailed statement of the evidence admitted and of the laws of the various states in question and of the general law of the land upon the subject of the right of the Illinois domiciliary executors or ancillary administrators or assignees to attach in the states in question the debt due by the corporations in question to a South Carolina Corporation. We submit to this Honorable Court that in the appendix will be found full data upon all questions that may be involved in regard to the attachment question, and full evidence of the complete collectibility of the debt of the Santee Company to the Beidler estate by attachment in any of the six states suggested and without resort to the laws of the State of South Carolina.

The Doctrine of Making the Maxim and the Situs Yield.

In some of the decisions there are references to the right of a state by legislative enactment, to make the maxim "*mobilia sequuntur personam*" and the situs of a debt at the domicile of the creditor yield, and of the

right of a state by legislative enactment to assign a situs in a state other than that of the domicile of the creditor. We mention this matter herein simply by way of elimination. This doctrine is manifestly not applicable to the present case. It was not even claimed in the argument before the Supreme Court of South Carolina that said doctrine was applicable or is there any reference whatsoever to said doctrine in the decision of the Supreme Court of South Carolina.

The inapplicability of the doctrine to the Beidler case is manifest from the following considerations:

(1) It would certainly be taking property without due process of law to attempt to base the present proposed inheritance tax upon the idea of a supposed power of the Legislature of South Carolina to make the maxim and the situs in question yield, unless there was at the moment of Mr. Beidler's death a Statute in South Carolina purporting to have this effect. This Court has directly so ruled in New Orleans *vs.* Stempel, 175 U. S., 312. As appears hereinbefore the Inheritance Tax Act of South Carolina as it existed at the moment of Mr. Beidler's death, made no attempt whatsoever at making the situs of a debt to a non-resident yield. It was only after Mr. Beidler's death and after the decision of the Supreme Court of South Carolina in the Fuller case that the Amendatory Act was passed which might be construed as a legislative attempt to make the maxim and the situs yield as to estates or persons dying after its enactment. No claim whatsoever is made that the Statute was retroactive. It is to be especially noted that the Supreme Court of South

Carolina in its decision herein, does not construe the Statute that existed at the date of Mr. Beidler's death as having the effect of being an attempt to make the maxim and the situs yield; but the construction placed upon the Statute of the Supreme Court of South Carolina is, without any effort whatsoever at making the maxim and the situs yield, that the debt in question constituted property within the State of South Carolina through its inherent nature and without any legislative control whatsoever being exerted over it.

(2) Under the decision *In re* New Orleans *vs.* Stempel, *supra,* we submit that a State Legislature can not by mere legislative enactment constitute a *situs* within a State and make the maxim "*mobilia sequuntur personam*" yield as to a thing, for example a mere indebtedness to a non-resident of said State, which has no kind of existence already in being in the State in question. In other words if the thing to be taxed, the indebtedness in this case, has no existence in the State of South Carolina, the Legislature of South Carolina may not reach out beyond its borders and bring it within the State and subject it to taxation. In the Stempel case the Court quotes with approval from the Louisiana decision of Railey *vs.* Board of Assessors, 44 La. Ann., 765, to the effect stated, as follows:

> "There is no doubt of the legislative power to modify the rule of comity, *mobilia personam sequuntur, in many respects.* Movables having *an actual situs* in the State may be taxed there, though the owner be domiciled elsewhere. *Even debts may assume such concrete form in the evidences thereof that they may be similarly sub-*

> *jected when such evidences are situated in the State,* as in the case of bank notes, public securities, and possibly, of negotiable promissory notes, bills of exchange or bonds.
>
> "*But as to mere ordinary debts,* reduced to no such *concrete forms, they are not capable of acquiring any situs distinct from the domicile of the creditor, and no legislative power exists to change that situs so far as non-resident creditors are concerned.*" (Italics added.)

The Stempel case is full of the idea that there must already be something existent in the State in question before a legislature by mere legislative enactment may reach out and assign a taxable *situs* within the taxing State in order to raise revenue. It is true that in Liverpool *vs.* New Orleans, 221 U. S., 346, that it was held that by legislative enactment that a mere debt could be given a taxable *situs*, but the case is specifically based upon the fact that the debts therein rose out of a myriad of insurance policies actually solicited and actually written for the insurance company in question by its agents in Louisiana. The holding of the Court was that the debts in question had an actual existence and an actual business *situs* in Louisiana, and were things actually arising and actually existing in Louisiana to which the Legislature of Louisiana might assign a taxable *situs*, although the debts were due to a foreign corporation.

We submit that both of the considerations above clearly demonstrate the fact that the doctrine referred to can have no effect whatsoever over the Beidler case. Indeed no claim to that effect has been made either by

the defendant in error or by the Supreme Court of South Carolina, and the same is only mentioned as stated, by way of elimination.

Summary.

Leaving aside the question of a "business *situs*" which is discussed in the next section of this argument, we submit that the true consideration should be that of the character of the debt in question. We submit that under the Blodgett case and under the many decisions which it follows and enforces, that the *situs* of the open account indebtedness in question both before and after the death of Mr. Beidler, was in Illinois. We submit that it was not property within South Carolina that might be taxed and that for the State of South Carolina to endeavor to reach beyond its borders and to impose an inheritance tax upon said debt is a violation of the Fourteenth Amendment of the Federal Constitution.

We further submit that as the debt had no security, and was not evidenced by a bond, promissory note or specialty kept in South Carolina, that, as the *situs* of the debt was in Illinois that there was nothing to tax within the borders of South Carolina.

We further submit that if the doctrine of the Blackstone case is still to be fully applied, that its meaning upon its face and by unanimous interpretation that all courts including this Court have given to it, is that the burden is upon the State of South Carolina of showing, in some real and substantial way, that South Carolina is entitled to an inheritance tax for some service that

it might really perform for the Beidler estate. We submit that a huge inheritance tax is not lightly to be imposed, especially when it constitutes double taxation as it would in this case. We submit that for the State of South Carolina to be entitled to impose this tax that it must show some *quid pro quo* to the Beidler Estate, viz, that its laws or courts are actually going to perform some service for the Beidler Estate. We submit that there has been absolutely no such showing attempted. To the contrary, the showing in this particular case is that it is absurd to suppose that the Beidler Estate will need or require, or will in any fashion or form resort to the laws of the courts of South Carolina to complete the descent of this indebtedness from Mr. Beidler to his devisees, and that the effort to impose a tax is merely the assumption of a supposed power which does not in reality exist. We submit that it is not necessary or logical to assume that the Santee Company, owned absolutely by the Beidlers, will resist the payment of the debt. We submit, however, that if resistance on the part of the Santee Company must be assumed, that it is an absolutely established fact that the *situs* of the debt at the moment of Mr. Beidler's death was in Chicago and not in South Carolina, and that under the doctrine of this Court in Wilkins *vs.* Ellett, the moment the executors qualified, the title of the debt passed to them without any reference whatsoever to the laws of South Carolina and without the necessity of any assistance from these laws or the courts of South Carolina. We submit further and finally that if it be necessary to go to the extent of theorizing as to whether or not the debt could actually

by force of law have been collected outside of the State of South Carolina, that it has been abundantly shown that by the attachment or garnishment proceedings herein suggested that the debt could be collected in any one of six States other than South Carolina.

Hence, we submit that it was beyond the *power* of the State of South Carolina and was an infringement of the Fourteenth Amendment of the Federal Constitution, for the State of South Carolina to attempt to reach beyond its borders and to tax this indebtedness which legally existed beyond its borders and which did not constitute property within the State of South Carolina.

The Business Situs Question.

The South Carolina Tax Commission after the record for appeal to the Supreme Court of South Carolina was made up, requested the attorneys for the Beidler estate to furnish a detailed statement of the account between the Beidler estate and the Santee Company as it appears upon the books of Mr. Beidler kept in Chicago. With a view of allowing all parties freely to present to the court every possible question that might be raised herein from every angle, this request was cheerfully complied with and the Tax Commisison *based alone upon such detailed statement* which was printed as a supplement to the case herein, and without presenting or asking for one word of testimony as to actual course of dealing between the Santee Company and Mr. Beidler, claimed before the Supreme Court of South Carolina that the vital question in this case is

ruled by the so-called "business situs" law. The Supreme Court of South Carolina, in passing, and without the citation of any authority, sustained this contention.

We submit that such a showing falls far short of the test of what is necessary to establish a business situs, as laid down by this Court and other courts.

The "business situs" rule is an exception to the general rule that the situs of a debt is at the domicile of the creditor. To come within this principle the Tax Commission *dust have proven affirmatively the necessary facts* to establish the existence of the exception. All that is to be gathered from the account presented in the supplement is that from time to time Mr. Beidler deposited in the Corn Exchange Bank (certainly not in South Carolina but in Chicago, Illinois) large sums of money; and sometimes, evidently from his office in Chicago, sent checks to the Santee Company. There is no showing that Mr. Beidler had a loan agent or manager in South Carolina. There is no showing even that the loan was negotiated in South Carolina. The showing as made, on which alone the Tax Commission relies, falls far short of what the authorities which they relied upon below establish as the minimum requirement to establish a business situs in North Carolina. The principle upon which this exception to the general rule is based is well stated by the Mississippi court in *Adams v. Colonial Mortgage Co.*, 82 Miss., 263; 34 So., 482; 17 L. R. A. (N. S.), 138; 100 A. S. R. 633;

> "However phrased, the principle is this: That *wherever the money of a lender in one*

State is by the principal intrusted to the control of an agent in another State for the purpose of being kept in the latter State, and loaned out, collected and *reloaned, or habitually kept on deposit,* for safety merely, as held *In Re Romanie,* 127 N. Y. 80; 27 N. E. 759; 12 L. R. A., 401, so as thus to remain, through a course of dealing, *so long as to become localized as a part of the whole mass of personal property in the latter State,* such money acquires what is known as a 'business situs' for the purpose of taxation, as well as for certain other purposes not necessary to be dealt with here." (Italics added.)

In Cooley on Taxation (4th Ed.), Section 466, it is laid down:

"There is no business situs, it is held in the following cases: * * * * * * *

"4. *Where no business is done in the State by the owner or his agent relating to the credits taxed.*

"5. *Where there is no agent in the State and the owner* comes into the State only occasionally. *There is no business situs where the non-resident lender has no place of business or location or agent in the States, and where he accomplishes the loan outside the State,* although the negotiations for the loan were made by persons in the State and it was secured by mortgage on property in the State." (Italics added.)

In the footnote to this valuable work are cited three decisions in which, under the facts thereof, the exist-

ence of a "business situs" was denied and the imposition of a tax based thereon was actually upset, to wit,

> Adams *v.* Colonial Mortgage Company, *supra.*
> Reat *v.* People, 201 Ill., 469; 66 N. E., 242.
> Jamison *v.* Commonwealth, 120 Va., 137; 90 S. E., 640.

In the Adams case (from which we have hereinbefore quoted), the Colonial and United States Mortgage Company of Hull, England had actually made numerous loans, secured by mortgages, to citizens of Mississippi. These loans were mostly secured through a Mr. Glover, an attorney, some were secured by other attorneys, and some by direct application of the borrowers themselves. These applications were made to the local agency of the Company in Memphis, Tenn. The loaning company had no office or place of business within the State of Mississippi. The question submitted to the Supreme Court of Mississippi was whether the loans had a "business situs" in Mississippi and hence could be taxed therein. From the following quotation it will be seen that the Supreme Court of Mississippi squarely held that there was no business *situs* in Mississippi because there was no agent within the State of Mississippi, and because the business of lending was not conducted within the State. The court said:

> "We think on this statement of facts we are concluded by the case of State *v.* Smith, 68 Miss., 79, 8 South., 294, as to the Coahoma county case. This Court said in that case: 'There can be no doubt that, where an agency is created in this state for the loaning of money, and the business

> of loaning it is carried on here—this State being the locality in which the transaction is begun and completed—and the debt acquires a situs here, from the course of dealing between lender and borrower, through the agency established here, it is taxable; but where the nonresident lender has no place of business or location or agent in this State, and accomplishes the loan beyond the limits of the state, the fact that negotiations for the loan were made by persons in this State, and it was secured by mortgage on property in this State, does not subject it to taxation here! In the case before us the creditor has no agent in this state, and no place of business here. The money was not sent here to be loaned. The evidence of debt was not here. *The business of lending was not conducted in this State.* The debt was secured by a mortgage on property in this State, and the loan was obtained by the application of persons in the State transmitted to persons beyond its limits, who forwarded the money from without the State.' "

In the Reat case the Supreme Court of Illinois held that there could be no business situs and no tax where there was no agent within the state, and especially where there was no intention of *reloaning the fund* and thus carrying on a permanent business of loaning and reloaning. Said the court:

> "The holding of the cases decided by this Court would thus seem to be that where the owner of such credits or securities is a nonresident of Illinois, and is absent from that State, his securities, remaining in this State in the hands of an agent, are only subject to taxation

in this State *when they are so left in the hands of the agent for the purpose of having them renewed or collected, in order that the money realized from such renewal or collection may be reloaned by the agent as a permanent business.* The credits of the nonresident owner, so remaining in Illinois, must constitute the subject-matter *or stock in trade of the business of the owner as conducted by the agent.* In the case at bar there is no evidence that the notes and mortgage here under consideration were left by Mrs. Reat in Illinois for the purpose of being collected and *reloaned as a permanent business by any agent.*"

In the Jamison case the plaintiff, a resident of Maryland, had invested much money in many bonds and notes secured by deeds of trust on lands in Virginia, which securities were executed by residents of Virginia. Applications were made to him direct in Maryland. He had no office and no agent in Virginia. The Supreme Court of Virginia in ruling that there was no business situs involved and hence there could be no tax, said:

> "We take it for granted that it would not be contended that, if a non-resident were to come into a broker's office or elsewhere in this State and invest his money in a chose in action of any character as a loan, and do this repeatedly, he was engaged in business in the city or county where he made the investment or investments, within the meaning of the statute here under consideration. The evidence in this case shows no more than that Jamison acquired the bonds or notes in question in a precisely analogous manner; he simply purchased these

bonds or notes of residents of Virginia, secured on lands in Virginia, *and maintained no business domicile in Virginia, conducted either by himself or an agent.*

"The learned Attorney General cites a number of cases decided in the Supreme Court of the United States as supporting the contention that the test of the right of the State to tax these evidences of credit is not the presence in the State of the evidences of credit, not the jurisdiction over the person of the owner, nor the intervention of an agent, but the localization of the business from which they arise. An examination of these cases shows that the power of the State of origin of the credits to assess the same for taxation was upheld because *transactions in connection therewith were conducted within the State by agents of the creditor on the latter's behalf.*" (These italics by the Court.)

Turning to the decisions of this Court, it will be found that the meaning of the "business situs" doctrine is very well illustrated by the case cited by defendants in error below, viz, *Liverpool L. & G. Insurance Co. of New York v. Board of Assessors,* 221 U. S., 346, and by the other cases reviewed by the Court in that decision. That case involved the validity of a proper tax assessed by the State of Louisiana upon the amounts due a foreign insurance company by its policyholders within the State for premiums, upon policies written within the State, for which credits of thirty and sixty days had been extended, under a statute which definitely and specifically provided for

the assessment and taxation of credits due a non-resident "arising from business done" in the State. See State quoted at page 350 of 221 U. S. The tax was held not to be in violation of the 14th Amendment to the United States Constitution. The court said:

> "This Court has had repeated occasion to consider the validity of taxes imposed under the Louisiana Act. The case of *New Orleans v. Stempel*, 175 U. S., 309; 44 L. Ed., 174; 20 Supt. Ct. Rep., 110, arose under Chapter 106 of the statutes of 1890, but the pertinent features of the Act were the same. There it appeared that the assessed credits were evidenced by notes secured by mortgages on real estate in New Orleans; that these notes and mortgages were in that city, in the possession *of an agent*, who collected the proceeds and the interest as it became due, and deposited the same in a bank in New Orleans to the credit of the plaintiff, the guardian of the infant owners, who, like herself, were domiciled in the State of New York. The tax was sustained. In *State Assessors v. Comptoir National D'Escompte*, 191 U. S., 388; 48 L. Ed., 232; 24 Sup. Ct. Rep., 109, the question arose under the statute of 1898. In that case, a foreign banking company did business in New Orleans and there made *loans through a local agent*. The loans were made upon collateral security, the customer drawing his check, which was treated as an overdraft and held as a memorandum of the indebtedness. The court decided that the credits so evidenced, created in the Louisana business, were taxable in that State. In *Metropolitan Life Insurance Co. v. New Orleans*, 205 U. S., 395; 51 L. Ed., 853; 27 Supt. Ct. Rep., 499, also arising under the

> Act of 1898, the validity of a similar tax was upheld. That case was one of *loans made through the local agent* of the insurance company, a New York corporation doing business in Louisiana, to its policyholders upon the security of their policies." (Italics added.)

In the case last referred to this court, in sustaining the tax, said:

> "We are not dealing here *with a single credit or a series of separate credits, but with a business.* The insurance company chose to enter *into the business of lending money within the State of Louisiana, and employed a local agent* to conduct that business." (Italics added.)

The Stempel case (175 U. S., 309) referred to in the foregoing quotation is typical of the cases in which a "business situs" for taxation purposes has been sustained; in which a non-resident capitalist usually an insurance company maintains within the taxing State an agency, and within said State and through such agency negotiates loans, and upon making collections makes new loans, thereby making the fund a "revolving fund" and actually doing a loaning business in the State in question.

In the light of the foregoing authorities, it would seem apparent that the business situs doctrine could not soundly be applied to the debts due Beidler by the Santee Company. There it not the slighest foundation in the case for inference that Mr. Beidler had any agent or agency in the State of South Carolina either

for the purpose of making these loans or of collecting them, or that he was conducting any general lending business within the State. On the contrary, the book account tends to show that the balance due Beidler is merely a single credit or, at most, a series of separate credits due by a single debtor on account of a personal loan or loans made by Beidler to the Santee Company outside the State and payable to him outside of the State. *There is no showing, claim or pretense that the loan or loans were negotiated in South Carolina.* Apparently, the money was placed to the credit of the Santee Company, or checks mailed to it, not in South Carolina, but in Chicago, Illinois. The debts, under the well-settled rule, were payable at the domicile of the creditor—Chicago, Illinois. The controlling and legal book entries upon which Mr. Beidler would have had to sue, if suit had been necessary, were in Chicago.

But the Supreme Court of South Carolina ruled,—(Transcript p. 101), "Both the debt and the dividend were involved in the assets of the Santee River Cypress Lumber Company; they were part of its working capital." To this holding we ask to reply that in so far as the proceeds of these loans were money or property in the State of South Carolina the value thereof was reflected in the *assets* of the Santee Company upon which the State levied its property tax year by year and in the *stock* of the Santee Company upon the transfer of which under the Inheritance Tax Statute the

State has already in this proceeding levied and collected a tax of more than sixty thousand dollars at a valuation of $204 per share (par value $100).

Respectfully submitted

ARTHUR B. SHAFFNER,
P. F. HENDERSON,
HENDERSONS & TALLEY,
Counsel for Plaintiff in Error.

APPENDIX.

The Beidler Estate Did Not of Necessity Have to Enter the Courts of South Carolina to Enforce the Collection, if Resistance Were Made, of Its Debt Against the Santee Company.

It is the claim of the plaintiffs in error that if the necessity arose its debt against the Santee Company could be collected by attaching in any one of five or six States the exceedingly large indebtedness of the Brooklyn Cooperate Company and of the American Sugar Refining Company to the Santee Company, which indebtedness is vastly larger than the debt of the Santee Company to the Beidler estate.

The "case" before the Supreme Court of South Carolina herein fully develops all of the facts upon which this contention is based, which facts are reproduced in the present Transcript of Record. We now desire to bring these facts to the Court's attention.

Exhibit "A" (pp. 20-33) comprises a contract between the Santee Company and the Brooklyn Cooperate Company with the guarantee thereof by the American Sugar Refining Company, by which the Santee Company sold to the Brooklyn Company the timber upon sixty-nine tracts of land in South Carolina for $4,885,343.20. At pp. 28-33 will be found the unconditional guarantee of payment by the Brooklyn Company by its parent company, the American Sugar Refining Company, which guarantee was accepted in writing by the Santee Company. The contract in question uses

the expression "let" and "rental payments," but is undoubtedly a contract of sale and a mortgage upon the property sold and would be so construed by the courts of South Carolian under *Singer Machine Company v. Smith*, 40 S. C., 529, and kindred decisions. This contract provides for an initial payment of Twenty-five Thousand ($25,000) Dollars and quarterly payments during each year of its life of Sixty Thousand, Three Hundred Seventy-nine and 29/100 ($60,379.29) Dollars. Before the date of Mr. Beidler's death nine of these quarterly payments had been made, hence by simple calculation the amount that had been paid before this event was Five Hundred and Sixty-eight Thousand, Four Hundred Thirteen and 61/100 ($568,413.61) Dollars, and upon the date of Mr. Beidler's death there remained unpaid the sum of Four Million, Two Hundred and Eighty-six Thousand, Nine Hundred and Twenty-nine and 59/100 ($4,286,929.59) Dollars—vastly more than the amount due by the Santee Company to the Beidler estate, and even at the present time as much as three and one-half million dollars is still unpaid.

It is recited in the contract in question that the Santee Company is a corporation of South Carolina, the Brooklyn Company a corporation of New York State, and that the American Sugar Refining Company is a corporation of New Jersey, and it is stipulated in the "transcript" that these recitals are true and correct.

It remains to consider (a) whether the Brooklyn Company and the American Sugar Refining Company

are amply solvent, and (b) whether the debt which they owe, or will in the future owe, to the Santee Company could be reached by attachment or garnishment in any other State save South Carolina.

It should be noted in passing that in all of the laws of attachment and garnishment as will hereinafter be shown in detail, that a debt may be reached which is not yet due, the same to be paid to the attaching creditor when it falls due under the supervision of the court.

Hence the fact that much of the debt is not due by the Brooklyn Company and the Sugar Refining Company to the Santee Company does not militate against the right of the Santee Company to attach or garnish.

The Ample Solvency of the Brooklyn Cooperage Company and the American Sugar Refining Company.

Exhibit "B" (pp. 33-38) is an affidavit of Mr. M. B. Cross, who, for the purpose of amply proving the great wealth of these two companies, actually during August and September, 1925, visited some of the plants of these companies in New York City, in Brooklyn, in Boston, in Philadelphia, and in Baltimore. He summarizes the results of this visit as follows, giving the value of the visible property of each company in each State visited:

	Brooklyn Cooperage Company	American Sugar Refg. Company
New York	$750,000.00	$5,750,000.00
Massachusetts	100,000.00	2,500,000.00
Pennsylvania	150,000.00	4,500,000.00
Maryland	200,000.00	10,000,000.00
	$1,200,000.00	$22,750,000.00

It is hereinafter shown that no mortgages exist upon any of said property.

It is further hereinafter shown that both companies own much more property and many other plants than those visited by Mr. Cross, it having been deemed unnecessary for him to continue his visit for the purposes of this proceeding to other points where the companies in question owned property.

The showing of the wealth of these companies is continued in Exhibits "L," "M," and "N."

It was agreed between the parties hereto that no question be made (p. 7) "as to the form in which said evidence was presented to the commission," in other words, the fact that the exhibits referred to were not sworn to and were not presented in a more formal shape was expressly waived by the Tax Commission.

The three Exhibits in question then rank as declarations of the American Sugar Refining Company of the fact that it owns all of the stock in the Brooklyn Cooperage Company; and its declaration as to what other property it owns, and of the condition of its business, and the value of its assets, constitutes ample and complete proof of its entire solvency and of its ability, and of the ability of the Brooklyn Cooperage Company to pay the debt that it owes to the Santee Company. These documents further and entirely prove the existence of property both of the Brooklyn Company and of the Sugar Refining Company in the States named which could be reached by an attachment or garnishment at the suit of the Beidler estate.

Exhibit "L" is the application which was accepted

and approved for the listing of its bonds amounting to $30,000,000, upon the New York Stock Exchange. It is shown in this application and in the contract between the Sugar Refining Company and the Chase National Bank (Exhibit "N" p. 84), that the bonds are not secured by a mortgage upon the property of the Sugar Refining Company, and that no mortgage would be allowed to exist during the currency of the bonds upon the property of either the Sugar Refining Company or upon property of the Brooklyn Cooperage Company, unless the bond issue were secured thereby.

Under the heading of "description of property" (pp. 70-71) the Sugar Refining Company sets out in detail its various plants, and in p. 71 the application sets out the fact that the Brooklyn Cooperage Company owns vast timbered areas, one hundred thirteen and one-half miles of railroad, and factories in Boston, New York, Philadelphia, Georgetown, Red Cross (La.), Chalmette, and Baltimore. In Exhibit "M" (pp. 81-84) which is an excerpt from an address of the president of the American Sugar Refining Company, the relationship between the parent company and the Brooklyn Company is fully set out, it being explained that the Sugar Refining Company "in shipping their product to the four quarters of the globe required each year millions of barrels," and that the Brooklyn Cooperage Company is used to furnish these barrels. Coming closer to the issue is the statement of the American Sugar Refining Company of December 31st, 1924, found at pp. 82-84 of the record.

This statement is for the year during which Mr. Beidler died. It shows assets of the Sugar Refining Company amounting to $162,433,541.11. There are no liens upon any of this property. The liabilities including the bond issue were but $36,234,490.71, showing a net worth of more than one hundred and twenty-two million dollars.

We submit that these exhibits with the testimony of Mr. Cross fully establishes the vast wealth of these companies and the existence of ample property subject to garnishment or attachment in any of the jurisdictions hereinafter referred to.

Hence it remains to consider whether or not an attachment or garnishment could be maintained in any one of the States referred to in the record, to-wit: New York, Massachusetts, Pennsylvania, Maryland, Missouri or Arkansas.

The Attachment or Garnishment Question.

As we have pointed out in our argument in chief in the consideration of the decision of this Court *in re*, Wilkins *vs.* Ellett, it was held therein that a domiciliary executor might legally assign such a claim as the debt of the Santee Company to the Beidler Estate and that the assignee might sue in any State in which an assignee is allowed to maintain an action in his own name. In this consideration it was shown that in New York State it has been definitely decided that the assignee of a New Jersey domiciliary executor might personally maintain an action upon a debt in New York. See Scher *vs.* Adams, 220 App. Div., 309. The

same situation exists in Massachusetts and Pennsylvania, it appears, by decisions set out by this Court in the Wilkins case. Such decisions are Harper *vs.* Butler, 2 Pet., 239; Rand *vs.* Hubbard, 4 Met., 252-260; Peterson *vs.* Chemical Bank, 32 N. Y., 21; Harris *vs.* Hall, 11 Pa. Co., 53, 148 Pa., 345.

Again it is to be especially noted, that there are enabling statutes existing in the States of New York and in Arkansas which specifically permit a foreign domiciliary executor personally to enter the courts of New York and of Arkansas and there to maintain an action on a debt, without the appointment of an ancillary administrator. Bostwick *vs.* Carr, 165 App. Div., 55; 151 N. Y. S., 74; St. Louis Rwy. Co. *vs.* Cleere, 76 Ark. 377; Laurence *vs.* Nelson, 144 U. S., 272; Hayes *vs.* Pratt, 147 U. S., 569.

It has been specifically shown that the Brooklyn Cooperage Company and the American Sugar Refining Company own in New York State property worth vastly more than the debt involved herein; and that in Arkansas they have considerable holdings. In any other State involved, ancillary administration could be taken out in order to bring action.

Hence, on the threshold of the attachment question, it is a fact that there would be no difficulty and no question about a plaintiff being legally available to maintain an action against the Santee Company in any of the States involved, in which it would be proposed to attach the debt due by the Brooklyn Cooperage Company and the American Sugar Refining Company to the Santee Company. The next question is whether such an attachment would lie.

The general right of a creditor to attach, in a foreign State, a debt owing to his immediate debtor—a non-resident of such State—is fully established by this Court in a line of decisions beginning with Rwy. Co. *vs.* Sturm, 174 U. S., 710.

In the *Sturm case,* Sharrett, a citizen of Kansas, was sued in Missouri by one Stewart for debt, and Sharrett's wages earned in Kansas while working for the Rock Island Railway (an Iowa corporation, doing business in Missouri), were attached in Missouri. The Supreme Court of the United States held that the proceeding was one *in rem;* that in attachment matters the *situs* of the debt was unimportant; that the necessary thing was to find and serve, in the jurisdiction of the State in which the action is brought, *a debtor who owes a debt to the original debtor of the plaintiff.* Hence the Supreme Court of the United States upheld the action of Stewart in Missouri by the attachment against the Rock Island, of a debt due Sharrett in Kansas.

There are two other decisions of the Supreme Court of the United States which are directly in point and which conclusively show that the Beidler estate could in any State in which the Brooklyn Company or the Sugar Refining Company owns property and does business, attach or garnish the debt due by these companies to the Santee Company. These two cases are *Harris vs. Balk,* 198 U. S., 215, and its companion case of *Louisville and Nashville Railroad Company vs. Deer,* 200 U. S., 176.

The case of *Harris vs. Balk* is especially in point as the statute laws of the State of Maryland which are

set out in the supplement to the transcript herein are directly involved.

The facts underlying this decision were that both Harris and Balk were residents of North Carolina; Harris owed Balk one hundred and eighty ($180.00) dollars on open account with no written evidence of the obligation in existence. Balk in turn owed Jacob Epstein, a resident of Baltimore, three hundred ($300.00) dollars. Harris visited Baltimore on business and while there was served with a writ of attachment, attaching the debt due Harris to Balk in an action brought by Epstein against Balk, the attachment being based on the fact that Balk was a non-resident of Maryland. Balk was not served personally but only in the manner provided by the Maryland Statute, viz: the setting up at the Courthouse door of a copy of a summons and short declaration. (See Section 8, Maryland Statutes, set out in supplement.)

At a later date Balk commenced action in North Carolina against Harris for the one hundred and eighty dollars. Harris set up the Maryland judgment as a bar; the case went to the Supreme Court of North Carolina four times, and that Court held that the Maryland attachment was illegal because as Harris was a non-resident of Maryland and was only casually in the State, that the *situs* of the debt due by Harris to Balk was not in Maryland but was in North Carolina.

The Supreme Court of the United States in a learned decision held that the attachment was entirely valid and the fact that Harris had paid the debt due to Balk to Epstein was a bar in Harris' favor. The Court said:

"We do not see the materiality of the expression 'situs of the debt,' when used in connection with attachment proceedings. If by *situs* is meant the place of the creation of the debt, that fact is immaterial. If it be meant that the obligation to pay the debt can only be enforced at the situs thus fixed, we think it plainly untrue. *The obligation of the debtor to pay his debt clings to and accompanies him wherever he goes.* He is as much bound to pay his debt in a foreign State when therein sued upon his obligation by his creditor, as he was in the State where the debt was contracted. *We speak of ordinary debts, such as the one in this case.*"

It is to be observed that the theoretical case of the executors of the Beidler estate suing the Santee Company in Maryland (for instance), where both the Brooklyn Company and the Sugar Refining Company maintained plants and do business, presents a much stronger case and a case subject to fewer possible legal objections than that presented in *Harris v. Balk*, for the reason that in *Harris v. Balk*, Harris was merely casually and temporarily in the State of Maryland, whereas the Brooklyn Company and the Sugar Refining Company are actually there doing business and maintaining extensive and valuable plants, with agents always subject to the service of process.

The next case in the series, *L. & N. R. R. v. Deer* (200 U. S., 176), it is submitted, is practically on all fours with the situation which would exist in the theoretical case of the Beidler executors against the Santee Company with attachment of the debt, in Maryland

or some other State, owed to the Santee Company by the Brooklyn Company or the Sugar Refining Company.

In the *Deer case*, one Brock brought an action in the Courts of the State of Florida against Deer, a resident of the State of Alabama, for debt and in Florida garnished a debt due Deer by the Louisville and Nashvill Railroad, which railroad was as to the State of Florida a foreign corporation doing business, however, in Florida. The defendant therein, Deer, was served by publication. Brock obtained judgment against Deer and against the railroad as garnishee and the railroad paid to Brock the debt that it owed Deer. Deer later sued the railroad in Alabama and the railroad set up the Florida garnishment proceeding in bar. The Alabama Court held that the Florida garnishment proceeding was illegal. The Supreme Court of the United States reversed the Alabama decision and held, following the Balk decision, that the proceeding in Florida was entirely legal and constituted a bar to the Alabama action.

The exact parallelism between a theoretical suit in favor of the Beidler executors in Maryland, New York or any other State is immediately apparent. The Santee Company would be a non-resident of Maryland or New York (for instance) just as Deer was. The Brooklyn Company and the American Sugar Refining Company in Maryland (but not in New York) would be foreign corporations doing business in that State and maintaining a plant therein, just as the Louisville and Nashville Railroad was in Florida.

The very statute law discussed in *Harris v. Balk* as having been in existence in Maryland in that case, which the Supreme Court of the United States held was amply sufficient, is set out in evidence in the *Beidler case* in the supplement to the transcript, and we submit that it is thereby abundantly shown upon the authority of the United States Supreme Court that the theoretical action of the executors of the Beidler estate against the Santee Company could be maintained by an attachment or garnishment in any of the States as to which a showing has been made by the appellant.

There are countless decisions in this country upon this general question. The foregoing decision of the United States Supreme Court seems to be directly in point and to illustrate what the exact situation would be should the Beidler estate enter the Courts of New York, Massachusetts, Pennsylvania, Arkansas, Missouri or especially Maryland to sue the Santee Company, serving it by publication and attaching the debt due it by the Brooklyn Company and the Sugar Refining Company, each being corporations either residents of or doing business and maintaining property of a substantial nature in the State in which the attachment suit might be brought.

We ask further to cite a few general authorities which seem to be directly in point before turning to the showing made of the law of the six States named. These authorities are directed particularly to the point that for attachment purposes in any State in which

there is a general attachment law, that there is sufficient legal warrant to justify ataching a debt owing to plaintiff's debtor, by one residing or doing business in such State.

2 R. C. L., pages 805-6:

> "The right of a State through its tribunals to subject property situated within its limits, owned by non-residents, to the payment of demands against them, and the fact that this jurisdiction in no respect infringes upon the sovereignty of the State where the owners are domiciles, is too well established to admit of argument. But if service is had by publication, and there is no appearance for the defendant, the action is practically a proceeding *in rem* against the attached property, the only effect of which is to subject it to the payment of the amount which the Court may find due the plaintiff. In the case of movables their seizure under the attchment shows that their actual *situs* is within the jurisdiction of the Court. But in respect to intangible interest, debts, choses in action, bonds, notes, accounts, interests in corporate stocks and things of a similar nature, the question whether the *res* is within the jurisdiction of the sovereignty, where the process is issued, is not so readily determined. The general rule is well-settled that the *situs* of debts and obligations is at the domicile of the creditor. But the attachment laws of many States recognize the right of a creditor of a non-resident to attach a debt or credit owing or due to him by a person within the jurisdiction where the attachment issues, and to this extent the principle has been sanctioned that the laws of a

State, for the purposes of attachment proceedings, *may fix the situs of a debt at the domicile.*"

14 A. & E. Enc. of Law, pages 801-2:

"General Rule as to *Situs* of Debts not Applicable to Garnishment Proceedings.—The general rule that the *situs* of a debt for the purpose of distribution, taxation, etc., is at the residence of the owner, has been practically universally acknowledged not to apply in case of garnishment proceedings.

"Debts owing by Resident Garnishee to Non-Resident Defendant.—A convincing illustration of the doctrine that the *situs* of a debt is not necessarily fixed by the residence of the creditor is shown by the cases, which universally hold that a debt due from a resident debtor to a nonresident creditor may be subjected by garnishment proceedings to the payment of claims against such creditor, though service upon such creditor is by publication only."

Plimpton *v.* Bigelow, 93 N. Y., 592:

"In the case of tangible property, capable of actual manucaption, it must have an actual *situs* within the jurisdiction. But credits, choses in action and other intangible interests are made by statute susceptible of seizure by attachment. The same principle, however, applies in this case, as in the other, the *res*, that is, the intangible right or interest, to be subject to the attachment, must be within the jurisdiction. * * * Where the defendant, who owns a credit, is within the jurisdiction, there is no

difficulty through procedings in *personam* in reaching and applying it in discharge of his debt to the plaintiff. But where he is out of the jurisdiction, and the debt or duty owing to him, or the right he possesses exists against some person within the jurisdiction, attachment laws fastened upon that circumstance, and by notice to the debtor or person owing the duty or representing the right, impound the debt, duty or right, to answer the obligation which the attachment proceeding is instituted to enforce. In the case supposed the debt, duty or right, for the purpose of attachment proceedings, is deemed to have its *situs* or locality in the jurisdiction."

Douglass *v.* Phenix Ins. Co., 138 N. Y., 209, 219; 34 Am. St. Rep., 448; 33 N. E., 939; 20 L. R. A., 118:

"But it is a fundamental rule that in proceedings the *res* must be within the jurisdiction of the Court issuing the process, in order to confer jurisdiction: *Plimpton v. Bigelow,* 93 N. Y. 593. In the case of movables their seizure under the attachment shows that their actual *situs* is within the jurisdiction. But in respect to intangible interests, debts, choses in action, bonds, notes, accounts, interests in corporate stocks, and things of a similar nature, the question whether the *res* is within the jurisdiction of the sovereignty, where the process is issued, is not so readily determined. The general rule is well settled that the situs of debts and obligations is at the domicile of the creditor. But the attachment laws of our own and of other

> States recognize the right of a creditor of a non-resident to attach debt or credit owing or due to him by a person within the jurisdiction where the attachment issues, and to this extent the principle has been sanctioned that the laws of a State, for the purposes of attachment proceedings, may fix the situs of a debt at the domicile of the debtor: *Embree v. Hanna*, 5 Johns., 101; *Williams v. Ingersoll*, 89 N. Y. 508, 526."

Kansas City, Pittsburg and Gulf Railway Company v. Parker, 86 A. S. R., 205:

> "*Garnishment. Situs of debt for the purpose of garnishment is not only at the domicile of the* debtor, but in any State in which the garnishee may be found, provided the law of that State permits the debtor to be garnished, and the Court acquires jurisdiction over the garnishee through his voluntary appearance or actual service of process upon him within the State."

In this case the Court stated that the question was, "Can appellant, a citizen of Arkansas, garnish a foreign railroad corporation operating a railroad in this State, for a debt due one of its employees, for labor performed in the State of Arkansas, the employee being a citizen of Missouri?"

The Court answered the question as follows:

> "Professor Minor, in his recent work on Conflict of Laws, after stating and reviewing the various theories held upon this subject, states the true theory to be that the situs of a debt, for purposes of garnishment, is not only at the domi-

cile of the debtor, but in any State in which the garnishee may be found, provided the municipal law of that State permits the debtor to be garnished, and provided the court acquires jurisdiction over the garnishee through his voluntary appearance or actual service of process upon him within the State. We concur in this view. For a full discussion of the question, see Minor on Conflict of Laws, c. 10, p. 270. Waples on Debtor and Creditor, Situs of Debt, secs. 171, 176, 177, and authorities cited and reviewed therein; 14 Am. & Eng. Ency. of Law, 801, et seq., and cases cited."

The decision of the Supreme Court of South Carolina in the case of *Campbell v. Home Insurance Company*, 1 S. C., 158, is quite pertinent to the present inquiry.

In this case Campbell, a resident of South Carolina, sued the defendant Insurance Company for a fire loss sustained within South Carolina. The Insurance Company did not dispute the validity of the claim, but set up the fact that several plaintiffs, residents of New York State, had brought action in the Courts of New York State against Campbell, who had been served by publication in South Carolina, and that these plaintiffs had attached in the hands of the Insurance Company in New York State the insurance money due Campbell for the losses sustained in South Carolina; that these actions had gone to judgment in New York State and that the insurance money had been paid to these plaintiffs, and that the Insurance Company was entitled to credit for the amount so paid.

The Supreme Court of South Carolina, taking judicial cognizance of the existence of courts of general jurisdiction in New York State, upon the presentation of an exemplified copy of the proceedings therein and upon actually allowing parole testimony to supply certain defects in said proceeding upheld the contention of the Insurance Company and allowed as a deduction the amounts that it had paid to the plaintiffs in New York State as a result of the attachment proceeding therein had, in which Campbell was served, not personally, but by publication in South Carolina.

A sequel to this interesting case is that of *Mars v. Virginia Home Insurance Company,* 17 S. C., 514. The situation in the Mars case and the result was entirely similar to that of the Campbell case. In the Mars case a citizen of the State of South Carolina had gone to Virginia and brought an action against that other citizen of South Carolina who had sustained the fire loss and the validity of the Virginia proceeding in which the insurance money had been attached in Virginia was recognized by the Supreme Court of South Carolina.

In the more recent case of *Lafitte v. McNeal Marble Company,* a debt due a Georgia corporation by residents of South Carolina was successfully attached.

In passing, we ask to say that should it be contended that the executors of the Beidler estate, being residents of Illinois, could not enter the courts of the states of New York, Pennsylvania, Massachusetts, Maryland, Arkansas or Missouri to sue a South Carolina corpora-

tion (a doctrine which finds no basis in the showing made in the "record") such a position finds complete answer in the fact that an "ancillary administration" with a resident of the State in question acting as administrator c. t. a. could be taken out; or that the debt could be assigned to a resident of the State in question. Furthermore, and as a complete answer to any such contention, is the fact that it has been amply decided by the United States Supreme Court and by numerous other courts, that any rule or regulation of any court of any state or any statute, which would give one of its residents a right to sue under any set of circumstances and deny that same right to a non-resident of said state would be repugnant to Section 2 of Article IV of the Federal Constitution, which provides that citizens of each state are entitled to all privileges and immunities of the citizens of the several states. It has been definitely held that this section secures to citizens of one state the right to resort to the courts of another equally with the citizens of the latter state.

In re Clarendon Boat Oar Company, 257 U. S., 534.
Blake *v.* McClung, 172 U. S., 252.
Cole *v.* Cunningham, 133 U. S., 107.

This doctrine is fully enunciated by the Supreme Court of the United States in *Harris v. Balk, supra,* wherein the court held:

> "There can be no doubt that Balk, as a citizen of the State of North Carolina, had the right to sue Harris in Maryland to recover the debt which Harris owed him. Being a citizen of

> North Carolina, he was entitled to all the privileges and immunities of citizens of the several states, one of which is the right to institute actions in the courts of another state."

We then pass to a brief consideration of the laws of the various states in question which appear in the transcript and were offered in evidence before the Tax Commission, and we submit that in each of the states referred to the Beidler estate properly represented could maintain an action against the Santee Company, serving it by publication and attaching or garnishing the debt due it by the Brooklyn Cooperage Company or the American Sugar Refining Company, which in each instance are corporations doing business in the state referred to and have in all of said states been shown to possess abundant property to respond to the attachment.

It is further a fact that if jurisdiction of the Brooklyn Cooperage Company or the Sugar Refining Company can be secured in any of the states in question, that as is pointed out in the Fuller decision under the "full faith and credit" clause of the Federal Constitution, recourse could be had to property in other states if the property of said corporations in the particular state in question were not sufficient to satisfy the debt.

The New York State Law.

The provisions of the New York law are set out under Exhibit "C" (pp. 38-45) and Exhibit "O" (pp. 85-87). The latter exhibit and similar exhibits as to other states is an affidavit of a practicing attorney

of the state in question. Its admissibility is questioned by the Tax Commission. Its consideration, unless common law questions arise, or rather other matters than statutory matters, is not insisted upon, but at folio 34 appears the stipulation that any decisions or statutes cited in these affidavits are to be considered in evidence herein although they may not be embodied elsewhere in the transcript. These remarks refer to the laws of other states as well as New York.

Section 902 of the New York Civil Practice Act fully provides for the right of attachment in cases such as the Beidler estate would bring herein. Section 903 provides as a ground for attachment the fact that the action is against "a foreign corporation" such as the Santee Company would be. Section 916 covers fully such an attachment as the Beidler estate would make of the money arising out of the contract between the Brooklyn Company and the Sugar Refining Company and the Santee Company; it reads as follows:

> "The attachment may also be levied upon a cause of action arising upon contract; including a bond promissory note, or other instrument for the payment of money only, negotiable or otherwise, whether past due or yet to become due, executed by a foreign or domestic government, state, county, public officer, association, municipal or other corporation, or by a private person, either within or without the state; which belongs to the defendant and is found within the county. The levy of the attachment thereupon is deemed a levy upon, and a seizure and attachment of, the debt represented thereby."

Turning to folio 109 in the transcript we find the construction of this statute by the Court of Appeals of New York, in *Edison Electric Company v. Guastavino, No. I,* 16 *App. Div.* 350, as follows:

> "By the express provision of Section 648, before cited, a levy of an attachment thereupon (viz: upon service of notice) is deemed a levy upon, and seizure and attachment of, the debt represented thereby. It is the debt that exists at the time of the service of the notice that is seized and levied upon. The fact that the debt is not payable at the time of the levy would not interfere with its being seized and levied upon by the sheriff upon the service of the warrant of attachment."

In Section 917, especially Subsection 3, the method of making the attachment is provided. In Section 922 the right of service upon the foreign corporation by publication is recognized.

The other sections quoted are administrative and fully sustain the right of attachment.

In the supplement to the transcript of record we set out in evidence fully the provisions of the New York law as to the publication of a summons.

The Massachusetts Law (pp. 45-51, 87-88).

In Massachusetts provisions are made for the usual attachment known to the South Carolina law and also to what is known as "trustee process." Section 90, Chapter 181 specifically provides that foreign corporations having property within the State shall be liable

to be sued and their property attached in the same manner as individuals.

Chapter 223 specifically provides that a transitory action may be brought against non-residents by "effectual attachment." Section 160 of said chapter provides for the issuance of the proper writ against defendant "to attach his goods or estate * * * or in an action commenced by trustee process to attach his goods or estate in his own hands and also in the hands of the trustee." Section 42 makes all property of every nature and kind (with a few immaterial exceptions) amenable to attachment.

Chapter 246 provides for the "trustee process" which would fully cover the remedy needed should the Beidler estate find it necessary to enter Massachusetts to collect its debt against the Santee Company in the hands of the Brooklyn Cooperage Company or the American Sugar Refining Company, both of which corporations, according to the affidavit of Mr. Cross herein, have and maintain places of business in Massachusetts.

In Section (1) it is provided that such an action "may be commenced by trustee process, and any person may be sued as the trustee of the defendant therein," with the proviso that as to a foreign corporation the trustees must have a usual place of business in the commonwealth. Section 20 provides that goods, effects, or credits of the main defendant in the hand of the party sued as his trustee may be reached by the process; and Section 24 specifically provides that this may be done even "before it has become payable."

Chapter 227 provides fully for the service of the main defendant by publication.

In *Bayer v. Lovelace,* 204 Mass., 327; 90 N. E., 538, both plaintiff and defendants were non-residents of Massachusetts and the garnishee—called "trustee" under Massachusetts practice—was a foreign corporation doing business in Massachusetts. It was held that the action would lie, the court saying (page 329):

> "The plaintiff, an inhabitant of another state, sued a non-resident partnership by trustee process, and summoned as trustee a foreign commonwealth, serving the writ on the commissioner of corporations under the authority of St. 1903, Ch. 437, Sec. 58. The trustee (garnishee) owed Krugel, one of the defendants, $2,000 upon an accepted order. The first question in the case is whether this debt could be attached effectively by a process of this kind.
>
> "The case falls exactly within that part of the R. L., Ch. 189, Sec. 1, which permits a foreign corporation to be summoned as a trustee of the defendant, if it has a place of business in the commonwealth of Massachusetts. Jurisdiction is thus obtained over the debt due a defendant, *and it matters not whether the plaintiff or defendant, either or both, are or are not inhabitants* of this Commonwealth. This is the doctrine which prevails generally, although not universally, in the Courts of this country, and

which is held by this Court and the Supreme Court of the United States."

Rothschild *v.* Knight, 176 Mass., 48.
Biggert *v.* Straub, 193 Mass., 77.
Chicago, Rock Island and Pacific Railroad *v.* Sturm, 174 U. S., 710.
King *v.* Cross, 175 U. S., 710.
Harris *v.* Balk, 198 U. S., 215.

"It is definitely decided that a judgment of this kind, charging a trustee, upon which he makes a payment, completely protects him, under the Constitution of the United States, against a suit by his creditor in another state."

Louisville and Nashville R. R. *v.* Deer, 200 U. S., 176.

"While in none of the cases are the facts exactly like those before us now, we think the principles and doctrines laid down in the cases above cited, when applied to the statute already referred to, fully cover the fundamental question in the present case." (See note in L. R. A., 1915-F, p. 880.)

Pennsylvania Law (pp. 51-54, 89-90).

Section (1) P. L., 1097 of the Pennsylvania Act provides specifically that the issuance of attachment against the personal property of a foreign corporation "in all actions *ex contractu.*" Section 48 provides the method of procedure, and Section 50 declares the effectiveness of a garnishment so made.

The decision of *Weiner v. American Insurance Company,* put in evidence at folios 68-69 of the transcript, holds specifically that a simple debt may be garnished;

and the case of *Day v. Zillerman*, 62 Pa., 72, set out at folio 114 of the transcript, shows that a debt which is not due may be attached in the same manner as one which is due.

The Pennsylvania statutes fail to make any specific provision for the service of process upon the defendant in foreign attachment proceedings, but the cases on the point, after expressed cognizance of this lack of statutory provision for such service, hold that service on the garnishee alone within the State is sufficient.

In *Glenny v. Boyd*, 26 Pa. Sup., 386, which was an action against the defendant by foreign attachment, in which service was had on the garnishees but the return was *nihil habet* as to the defendant, the court said:

> "A proceeding by foreign attachment is for certain purposes a proceeding *in rem*, and personal notice to the defendant is not required, since the action proceeds on the ground that actual notice can not be given.
>
> "* * * A plaintiff is entitled to judgment against a defendant in default of an appearance at the third term after the execution of the writ, but such a judgment binds only the interest of the defendant in the property attached. This appellant was entitled to a judgment against the defendant in default of an appearance, but that judgment bound only the property in the hands of the garnishees served in the original proceedings."

Again, in *Wolf v. Wolf*, 72 Pa. Sup., 91, we find the same opinion expressed:

"The party issuing a writ of attachment may direct the sheriff to serve both the defendant and the garnishee, but under the Act of 1901, he has his election to serve on the garnishee alone. The important service from the attaching creditor's standpoint is to stop funds in the hands of the garnishee, and this the legislature has said is all that is necessary to be done."

And in *Great Northern Moulding Co. v. The Philadelphia Picture Frame and Moulding Co.* (1910), 37 Pa., 210, at page 214, we find the following:

"The proceeding by foreign attachment is *ex parte* and statutory, and the provisions of the statutes must be strictly followed.

"In no part of any of the acts of assembly above referred to, nor in any other legislation upon the subject of foreign attachment, is any provision made for service of the writ on the defendant or to 'summon' the defendant by the Sheriff. The writ is not a summons to the defendant; it is an attachment of him by his goods and effects. And this manifestly for the reason that the proceeding is had upon the theory that the defendant, at the time of the issuing of the writ and execution thereof, is not within the jurisdiction of the court from which the writ issues, while his property is within the jurisdiction, and it is intended that such property may be held or taken in satisfaction of a debt due the plaintiff, who is within the jurisdiction."

In this same case the method of taking judgment in such cases is noted, the court saying:

> "There would appear to be no authority for taking judgment in case of foreign attachment for want of an affidavit of defense where no appearance has been entered for the defendant; but the proper procedure is to take judgment in such case for default of an appearance at or after the third term as provided in the Act of May 10, 1889. And after judgment is so taken, the damages should be assessed after the rule entered and evidence produced * * * or upon affidavit of the plaintiff or some other person cognizant of the transaction as provided by the Act of April 9, 1870."

The statute providing for judgment by default (Section 11029) is set out in the transcript of record at folio 69.

In *Wanamaker v. Stevens,* 18 Phila., 336 (S. C. Pa., C. C., 317), it was laid down that in foreign attachment the writ may be executed by serving a copy on the garnishee so as to bind a debt due by him to the defendant or goods of the defendant in the garnishee's hands; and also that the addition to the return of the Sheriff of *nihil habet* as to the defendant is not necessary.

Maryland Law. (See Supplement to Record, p. 132.)

The Maryland law upon the subject of attachment is fully set out in the supplement. Its validity and effect is fully discussed and upheld by the Supreme Court of the United States in *Harris v. Balk, supra.*

It provides full machinery for the attachment of the debt of the Cooperage Company and the Sugar Refining Company to the Santee Company, although the debt be not yet due. It is to be noted under the eighth section of said law that publication is not necessary. This section is referred to by the United States Supreme Court specifically in *Harris v. Balk.*

Missouri Law (pp. 55-56).

Section 1725 expressly provides that the plaintiff in any civil action is entitled to an attachment against property of the defendant "where defendant is a corporation whose chief office or place of business is out of this State."

Section 1846 provides that all debtors of the defendant may be summoned as garnishees and by Section 1871 it is specifically provided that debts not yet due to the defendant may be attached, but that no execution shall be awarded against the garnishee until the debt becomes due.

Other sections printed in the supplement to the case show the manner of obtaining service on the non-resident defendants so as to obtain judgment against him. The Missouri decisions make it quite clear that this remedy is available to non-resident plaintiffs as well as to residents.

In the early case of *Posey v. Buckner,* 3 Mo., 604, Posey, a non-resident of Missouri, brought an action of attachment against Buckner, also a non-resident, and the writ was served on one Davis as garnishee. It was argued that a non-resident could not avail him-

self of the remedy but the court held otherwise, saying (page 206):

> "No reason is seen why the writ of attachment should be restricted to residents. The first section of the Act of 1825, giving the remedy by attachment (See Digest, p. 144) gives it in all cases where any creditor or creditors shall file or cause to be filed, etc."

Again in *Graham v. Bradburg,* 70 Mo., 281, the court said:

> "The remedy by attachment is not confined to resident creditors."

In *Wyeth Hardware & Manufacturing Company v. H. F. Lang & Company,* 127 Mo., 242, the plaintiff and defendant were both residents of Missouri and it was sought to enjoin the defendant from prosecuting suits against plaintiff in Kansas and there garnishing debts due to it. A demurrer to the petition was sustained, and on writ of error, such judgment was affirmed by the Kansas City Court of Appeals. The case being certified to the Supreme Court of Missouri, that Court adopted the opinion of the Court of Appeals, in which it was said, at page 246:

> "It has been ruled in effect that a debt without reference to where payable is deemed attached to the person of the owner so as to have its *situs* at his domicile, yet this fiction always yields to laws for attaching the property of a non-resident, because such laws necessarily assume that the property has a *situs* distinct from the owner's domicile. Wherever the creditor

might maintain a suit to recover the debt there it may be attached as his property, provided the laws of such place authorize it."

The case of *Baisley v. Baisley,* 113 Mo., 545, involved an attachment suit in which both parties were residents of Oregon, and it was held that non-residence was no bar to the action, the Court saying:

> "The fourth clause of Section 2009, R. S., 1889, provides that 'When all the defendants are non-residents of the State, suit may be brought in any county in this State.' It will be observed that this clause is without limitation or restriction.
>
> "Suits, then, that is, *all suits,* whether by proceedings *in rem* or *in personam,* are allowed to be brought in any county in this State against a non-resident, and the mere fact of the party's non-residence, without more, is one of the grounds for an attachment. (Ibid., Sec. 521.) From an early day in this State it has been ruled that one non-resident may sue another by attachment in this State, *Posey v. Buckner,* 3 Mo., 604; *Graham v. Bradbury,* 7 Mo., 281; though the statute concerning attachments contains no mention of non-residents as suitors in our Courts."
>
> *Posey v. Buckner, supra,* is cited also in *Snowden v. McDaniel,* 7 Mo., 314, and in *New England Loan & Trust Co. v. Brown,* 59 Mo., App. 466, where the right of a non resident to sue in attachment is recognized, providing bond for costs is furnished.

In *Howland v. Chicago, Rock Island & Pacific Ry. Co.*, 134 Mo., 474, the Court cited the Wyeth *v.* Lang case, *supra,* and said:

> "In *Wyeth v. Lang,* we approved the ruling * * * * wherein it was held that debts have no *situs,* but may be attached in any State other than that in which the debtor is resident. 54 Mo., App., 147."

The question sometimes raised as to whether garnishment may be had upon a non-resident or upon a foreign corporation has been expressly passed upon in Missouri in favor of the jurisdiction.

In *McAlvister v. Pennsylvania Insurance Co.,* 28 Mo., 214, a Pennsylvania corporation, doing business in Missouri, was served as a garnishee; the Court said:

> "We are not aware of any principle of public policy which could induce the legislature designedly to discriminate between domestic insurance companies and these agencies of foreign insurance companies, which they have allowed to transact business herewith all the privileges of domestic corporations, so as to exempt the latter from liability to a process to which the former is undoubtedly liable. There is no more inconvenience in requiring a debt, confessedly due, to be paid over to a creditor of their creditor in the one case than in the other."

Arkansas Law (pp. 57-58).

Section 494 specifically authorizes attachment against a foreign corporation.

Section 503 provides for garnishment whenever the plaintiff shall have reason to believe that any person is indebted to the defendant.

Section 502 provides for executing the order of attachment by delivering a copy of the order to the person owing the debt or demand.

Sections 1159 and 1162 provide for constructive service against a non-resident or foreign corporation and Sections 6261 and following show the method of entering judgment on such constructive service.

That a foreign corporation doing business in Arkansas may be served, as a garnishee, has been expressly held in the case of *Kansas City, Pittsburgh & Gulf Ry. Co. v. Parker,* 69 Arkansas, 401, already cited. To the same effect is *St. Louis South Western Ry. Co. v. Vanderberg,* 91 Ark., 251.

Dunnegan v. Byers, 17 Ark., 492, expressly decides that a garnishee may be summoned even though the debt due from him to the principal defendant is not yet due and that such fact merely entitled the garnishee to a stay of execution until the debt matures.

Publication Statutes.

Inasmuch as, in the compilation as set out in the original record, the statutes of New York, Maryland, Missouri and Arkansas, as to service of a non-resident defendant, in case of attachment of his property within such State, and the statutes as to taking judgment in such cases, had been omitted, such statutes are fully set out in the supplement (pp. 129-138).

It may be added generally that if the attachment or garnishment against the Brooklyn Company or the Sugar Refining Company would be valid in any one State and should go to judgment therein against said corporations as garnishees that the judgment so rendered is a *personal judgment* against such garnishees to the extent of the debt it owes the Santee Company. Should it happen that there were not in the State in question sufficient property to answer the *personal judgment* so rendered, it is fully established by the *Fuller decision* by the South Carolina Supreme Court that under the "full faith and credit" section of the Federal Constitution, the personal judgment against the garnishee so rendered would be recognized and enforced by appropriate proceedings, in any other State in which the garnishees, the Brooklyn Company and the Sugar Refining Company, own property. This situation is not to be confused with the doctrine of *Pennoyer v. Neff* (95 U. S.), to the effect that the judgment obtained in foreign attachment or garnishment suit against the *original creditors* (the Santee Company herein) is valid only to the extent of property seized. The distinction is that in the case of the original debtor who is not served *within the State of the action,* the judgment is merely *in rem,* whereas as to the garnishee who is served in such State, the judgment is *in personam.*

That the judgment against the garnishee is personal, is fully established by the following language of the Supreme Court of the United States in *Harris v. Balk, supra:*

"Where money or credits are attached the inchoate lien attaches to the fund or credits when the attachment is laid in the hands of the garnishee, and the judgment condemning the amount in his hands *becomes a personal judgment against him.*"

(3466)